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**ANNUAL
REPORT
TO THE
ILLINOIS
GENERAL
ASSEMBLY**

**JOINT
COMMITTEE
ON
ADMINISTRATIVE
RULES**

JOINT COMMITTEE ON ADMINISTRATIVE RULES
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First Vice-Chairman: Senator Arthur L. Berman
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February 1983

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LETTER OF TRANSMITTAL

To The Members of The 83rd General Assembly

Ladies and Gentlemen:

I hereby submit the 1982 Annual Report of the Joint Committee on Administrative Rules for your consideration pursuant to Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1007.10). As required, this report contains the "findings, conclusions and recommendations, including suggested legislation" developed by the Committee as a result of its activities during 1982.

The Joint Committee, in celebrating its 5 year anniversary, has taken major strides in making administrative rules review a major tool of legislative oversight. Our review of proposed rules has continued to provide thorough examination of agencies legislative implementation efforts and our review of existing rules has produced several reports during the preceding year.

1982 also saw the Joint Committee exercising its power to delay the effectiveness of proposed rules, checking the implementation of the Department of Public Health and the Environmental Protection Agency's joint rules for the certification of laboratories. The Joint Committee has demonstrated this power can be effectively yet judiciously used to assert the prerogative of the legislature.

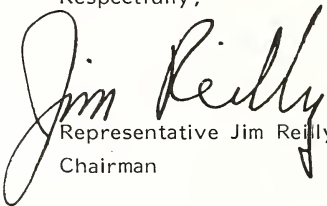


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The review of existing rules subject-by-subject has progressed and several reports were completed and discussed by the Joint Committee on Administrative Rules. Reports on State Travel, Vocational and Professional Education, and Business Regulations of the Departments of Agriculture, Public Health and Revenue and Wildlife Management were completed during 1982.

The members of the Joint Committee appreciate the cooperation of the numerous other members of the General Assembly who have shared their views with us in areas of particular concern. Your continued involvement in the activities of the Joint Committee is essential as we seek to develop and strengthen this oversight role that will benefit the legislative process.

Respectfully,


Representative Jim Reilly
Chairman

JR/pc
Ends.

1982 ANNUAL REPORT

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SECTION ONE

COMMITTEE ACTIVITIES

INTRODUCTION

The fifth annual report of the Joint Committee on Administrative Rules details the activities and recommendations of the Committee during 1982. The extensive work of the Committee during the year is demonstrated by the detailed statements of objection and recommended legislation included in the report. These two specific areas of the Committee's activities are presented in section three and section four.

Each of the Committee's activities during 1982 will be reviewed in this narrative section of the report. The approach and results of each of the programs and projects of the Committee will be discussed. The introduction outlines the basic functions of the Committee, explains the Committee's organization, highlights the Committee's major accomplishments in 1982 and presents an overview of the report. Those individuals who are unfamiliar with the functions and operation of the Joint Committee should find this introduction particularly useful. Other individuals who are acquainted with the Joint Committee's basic responsibilities and approach may want to go directly to the discussion of particular programs and activities.

Basic Functions

The most basic statement of the function of the Joint Committee is presented in Section 7.04(1) of the Administrative Procedure Act: "The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This statement indicates two directions of the Joint Committee's activities: (1) working with state agencies to improve rulemaking and rules and (2) promoting public understanding of the rulemaking process and of the rules themselves.

The Joint Committee was created in 1977 in a comprehensive amendment to the Administrative Procedure Act (Public Act 80-1035; House Bill 14). The Administrative Procedure Act had been passed in 1975, but the General Assembly recognized the Act's weaknesses without the existence of a mechanism for systematic oversight of the rulemaking process and direct legislative involvement. The creation of the Joint Committee was an attempt to fill that need for systematic oversight.

The legislature's desire for systematic oversight of state agencies' rulemaking and rules is met by the several interrelated review programs conducted by the Joint Committee. These programs are briefly summarized in the introduction. Additional details on each of the programs are presented in the various sections of the rest of the report.

1. Review of Proposed Rulemaking. Each new rule, amendment to an existing rule and repeal of an existing rule proposed by a state agency is reviewed by the Joint Committee. This review, which must be accomplished within a strict 45-day time period, is primarily intended to insure that new rules are within the agency's statutory authority and are legally proper.

2. Five-Year Review of all Existing Rules. The Administrative Procedure Act requires the Joint Committee to conduct a systematic review of all currently effective rules of all state agencies, regardless of when the rules were adopted. This program complements the review of newly proposed rules by providing for an examination of rules which may have been in effect for a long time and may no longer be serving the purpose for which they were intended. The primary purpose of this type of review is to clean up the existing rules and reduce or eliminate areas of conflict or overlap between rules.

3. Review of Emergency and Peremptory Rulemaking. To better monitor the rulemaking process, the Joint Committee also reviews emergency and peremptory rules which agencies have adopted in addition to regularly proposed rules. Since emergency and peremptory rules are not required to be published for public comment, the Joint Committee carefully reviews these rules to insure that they comply with the limited conditions specified in the Administrative Procedure Act under which such rules may be adopted. (see Table Six)

4. Complaint Reviews. The Joint Committee frequently receives complaints from the public about specific rules of state agencies. These complaints typically argue that the rule is unauthorized or unreasonable, or has a serious impact on the affected public. Although formal objections based on the complaints are not usually required, the Joint Committee attempts to answer the questions which have been raised about the rules to focus attention on issues which are of particular concern to the public.

5. Public Act Review. To supplement programs to review agency rules, the Joint Committee also reviews each new public act for its possible effect on rulemaking. The Committee informs agencies when it finds that a new public act may require rulemaking. Then, it monitors the agency's response and actions to adopt the necessary rules. This review is intended to help insure that acts passed by the legislature are implemented properly and translated into rules whenever necessary.

In a broad sense, each of the Joint Committee's programs is intended to facilitate coordination between the legislative and administrative processes in state government. They reflect a growing concern by the legislature that programs and policies be implemented as intended in the authorizing legislation.

Accomplishments During 1982

The Joint Committee has continued to develop as a strong and effective mechanism for legislative oversight of agency policy-making during 1982. Each of the Committee's basic functions have been performed with the objectives of the Administrative Procedure Act in mind and with a sensitivity to the capabilities of the agencies and to the needs of the public.

The most significant accomplishments of the Joint Committee during 1982 included four specific achievements.

1. Continued implementation of the Committee's power to prohibit the adoption of seriously defective proposed rules. The amendment to the Administrative Procedure Act which empowered the Joint Committee to block seriously defective proposed rules became effective on January 1, 1981 (see

Section 7.06a of the Act in Appendix A). The Committee adopted specific standards in its operational rules to clearly delineate the situations in which this new power would be utilized (see Section 220.950 of the Operational Rules in Appendix B). This authority was utilized only once during 1982, when the Environmental Protection Agency and Public Health proposed a set of rules to regulate the certification of environmental laboratories. An extended discussion of this specific action is presented on pages 30-32. While this instance may not be typical, it does illustrate that the Joint Committee has laid a solid foundation to implement this power. This power will continue to be utilized only infrequently as a last resort when less severe action has failed.

2. Completion of major parts of the study to identify and catalog all rules and regulations affecting businesses in the state that was initiated in 1981. This study has been conducted in cooperation with the Illinois Commission on Intergovernmental Cooperation and the Department of Commerce and Community Affairs. A steering committee has been formed and research has begun on the process of locating and collecting information about business-related regulations. A survey of state agencies and input from the business community has been developed and sent to selected agencies. A Catalog of Business Regulations is currently in the draft stages. Additional discussion of this project is located on page 42.

3. Completion of the review of rules in several major subject areas under the five-year review program. The review of state travel regulations, wildlife management, revenue, and vocational education were completed during the year. Numerous statements of objection and several recommended bills resulted from these reviews, which are discussed in more detail on page 24. These results confirm the usefulness of this systematic subject-by-subject review process.

4. Completion of the codification of approximately one-fourth of all of the rules and regulations. The Joint Committee advised, encouraged, and supported the efforts of the Illinois State Library, the Office of the Secretary of State and the Legislative Information System to accomplish the codification of these rules. The codification was completed prior to the October 1, 1981, deadline and work has begun on the codification of rules scheduled for the second year of this effort. The Joint Committee is continuing to monitor and

support this effort, looking forward to the publication of a complete Illinois Administrative Code in 1984 or 1985. The codification has the potential for greatly improving the availability of, and public access to, agency rules.

Legislative Oversight in Illinois

The Joint Committee on Administrative Rules co-sponsored an Assembly on Legislative Oversight at Illinois Beach, Zion, Illinois, January 7-9, 1982 to discuss legislative oversight.

Co-sponsoring were the Office of the President of the Senate, Office of the Speaker of the House, the Auditor General, the Commission on Intergovernmental Cooperation, the Select Joint Committee on Regulatory Agency Reform as well as the University of Illinois and the Institute of Government and Public Affairs.

The assembly attracted over 50 participants and included members of the General Assembly, legislative staff, executive department directors and staff, lobbyists, journalists, and academicians. The assembly participants approved a twelve point summary of their discussions which can be found in Appendix F.

Committee Members

The active involvement of the members of the Joint Committee in the on-going functions of the office has proven to be essential in making the office as effective as possible. Many of the Committee members have dedicated many hours to pouring over proposed agency rules, staff reports, agency responses to detailed questions and staff recommendations, as well as participating in formal Committee hearings to question agency representatives or to gather public input on rules and regulatory policies. While participation in these types of legislative oversight activities may not be the most visible, or the most personally rewarding, of the tasks required of legislators, it is an effective method of representing constituents and impacting government operations at a level where government programs actually affect the people of the State.

Members of the Joint Committee are appointed by the legislative leaders for two-year terms. Appointments are made during the summer and officers are elected by the Committee from its members in the fall of each odd-numbered year. Section 7.02 of the Administrative Procedure Act (see page 283) specifies these procedures. It also provides that vacancies are filled by the official who appointed the individual whose position is vacant.

Legislators who were appointed or reappointed to the Committee during 1982 are:

Appointed by the President of the Senate:

Senator Arthur L. Berman (Democrat, 28th District, Chicago)
Senator Vince Demuzio (Democrat, 49th District, Carlinville)
Senator James Gitz (Democrat, 35th District, Freeport)
Senator Jeremiah E. Joyce (Democrat, 28th District, Chicago)

Appointed by the Senate Minority Leader:

Senator Prescott E. Bloom (Republican, 46th District, Peoria)
Senator Jack E. Bowers (Republican, 41st District, Downers Grove)
Senator John Maitland, Jr. (Republican, 44th District, Bloomington)
Senator Richard A. Walsh (Republican, 5th District, Chicago)

Appointed by the Speaker of the House:

Representative Glen L. Bower (Republican, 54th District, Effingham)
Representative Bob Kustra (Republican, 4th District, Des Plaines)
Representative A.T. "Tom" McMaster (Republican 47th District, Galesburg)
Representative Jim Reilly (Republican, 49th District, Jacksonville)

Appointed by the House Minority Leader:

Representative John J. Cullerton (Democrat, 12th District, Chicago)

Representative Monroe L. Flinn (Democrat, 57th District, Granite City)

Representative Richard Kelly, Jr. (Democrat, 9th District, Hazel Crest)

Representative Harry "Bus" Yourell (Democrat, 8th District, Oak Lawn)

New officers were elected by the Committee members in the fall of 1981 as provided in the Administrative Procedure Act. These officers oversee the Committee's business and operations and serve as the Personnel Committee for evaluating employee performance. The officers elected in 1981, who will serve until the fall of 1983, are:

Chairman: Representative Jim Reilly

First Vice-Chairman: Senator Arthur L. Berman

Second Vice-Chairman: Senator Prescott E. Bloom

Secretary: Representative Harry "Bus" Yourell

Joint Committee Organizational Changes

During the latter part of 1982, the staff of the Joint Committee on Administrative Rules underwent a number of significant organizational changes. The changes were designed to increase efficiency in conducting reviews of agency rules and to eliminate the overlap between the substantive review staff sections.

Prior to the reorganization, the staff was divided into three separate sections. These included (1) Rules Review, responsible for reviewing all proposed agency rulemakings, (2) Compliance and Monitoring, who conducted the five-year review of existing rules, and an additional section, (3) Policy and Planning, whose responsibilities included complaint reviews and development and monitoring of legislation of interest to the Joint Committee.

Under the new plan, the staff structure has been streamlined into two divisions; the Rules Review and Compliance Division and the Policy, Planning

and Administration Division. (See chart on page 15) One of the primary reasons for this reorganization was to eliminate the problem of overlap between the Rules Review and Compliance and Monitoring sections. Under the old structure, staff reviews of new proposed agency rules and their existing rules sometimes resulted in a duplication of efforts. For example, while one staff reviewer would look at the issues and/or problems surrounding an existing agency rule, a different reviewer would look at amendments to or changes in the same rule. In many instances, agencies were being asked to respond to questions which had already been presented in an earlier review.

The new structure should help resolve problems of duplication. Instead of two sections each doing similar tasks, the new structure provides for five basic subject area groups. The reviewers in each of these groups will be responsible for both proposed and existing rules classified under their particular subject area. In addition to eliminating overlap, the new structure will help provide for an increase in reviewer expertise in his or her specific assigned area of review. A more narrow focus of review will also allow the reviewers to follow developments in federal or state legislation and regulation which are specifically related to their assigned areas. This should in turn help improve the efficiency and effectiveness of the staff's reviews.

The five subject areas which have been designated and distributed among the substantive review staff include:

1. Educational Services
2. Human Services
3. Government Administration
4. Environmental Administration
5. Public Services Administration

The Policy, Planning and Administration Division will continue its concentration on complaint reviews, monitoring and development of legislation, and special Joint Committee projects, and will also work in the area of planning and implementation of Joint Committee organizational policies and objectives.

It is anticipated that some time will be required before the staff restructuring can be fully achieved and properly implemented. This lag-time should be minimal however, and no significant problems are foreseen for either the agencies or the Joint Committee.

Report Overview

This report is divided into four basic sections. The first section (pages 5-51) is a narrative discussion of the Committee's activities during 1982. Each of the Committee's major functions and programs as well as various special projects the Committee has undertaken are outlined in this section. Also included is an analysis of a number of court cases and Attorney General's opinions which interpret the Administrative Procedure Act or affect the rulemaking process (see pages 43-51).

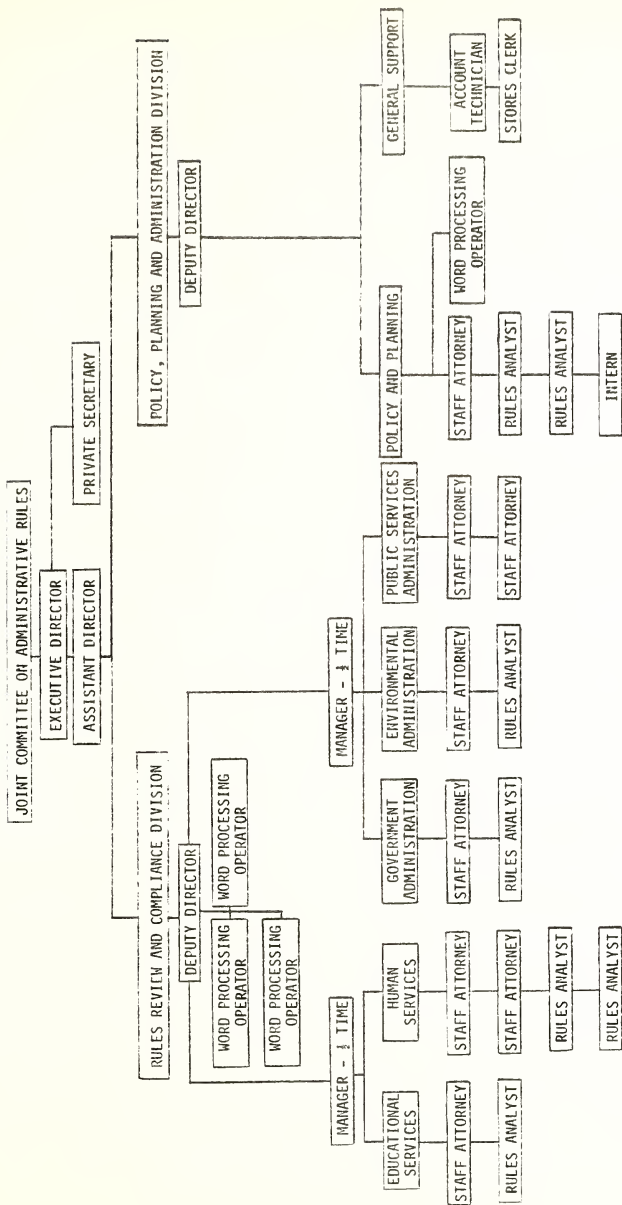
The second section of the report (pages 52-63) summarizes the Committee's activities and state agencies' rulemaking actions during 1982 statistically. A number of tables are included presenting breakdowns by agency and types of rulemaking actions. This section indicates not only the workload and general activities of the Committee, but also the general pattern of rulemaking by state agencies.

Each of the specific formal statements of objection issued by the Joint Committee during 1982 are collected in the third section of the report (pages 64-199) these statements, which were published in the Illinois Register when they were issued, are advisory in nature, but often result in significant changes in the rules. The statements are organized by agency along with information concerning the history and outcome of the rulemaking and the objection.

Section four of the report (pages 201-270) contains the legislation recommended or suggested by the Joint Committee for consideration by the General Assembly during the 1983 legislative session. Most of these bills are the result of specific reviews of agency rules which uncovered statutory difficulties. A discussion and summary of each bill is presented at the beginning of the section.

Supplementary materials which may be of interest to individuals concerned about the rulemaking process in Illinois, are presented in the appendices (pages 271-345). Included are the current versions of the Administrative Procedure Act and the Joint Committee's Operational Rules.

TABLE ONE
ORGANIZATION CHART



REVIEW OF PROPOSED RULEMAKING

The Joint Committee opened files on 510 rulemakings proposed by state agencies during 1982. As provided in Section 7.02(b) of the Administrative Procedure Act, the Joint Committee met on a monthly basis; thus the total 510 rulemaking proposals translates into an average of more than 42 proposals considered at each meeting of the Committee during 1982. The Joint Committee formally objected to nearly 30 of these rulemaking proposals, but the Committee's review resulted in changes in essentially every rule. These changes vary in magnitude from minor typographical or technical corrections to extensive substantive revisions.

Like previous years the rulemaking activity varied in complexity from amendments of merely a few words to the proposal of extremely controversial regulations exceeding a hundred pages in length. Although the total 510 represents a decrease in rulemakings from previous years, the totals for 1980 and 1981 both include a massive number of rulemaking proposals by an agency at one time. 1982 is the first year when no single agency proposed an excessive number of rulemakings at one time.

This section discusses several important activities and developments in the Joint Committee's review of proposed rulemaking during 1982, criteria used by the Joint Committee in reviewing rules, and some of the more significant objections issued by the Joint Committee in the last year.

Implementation of PA 82-849

The Regulatory Flexibility Act (PA 82-849), was sponsored by Senator Prescott E. Bloom (R.-Peoria). That Act, which became effective on January 1, 1982, was modeled after the Federal Regulatory Flexibility Act by assuming that small businesses are frequently unduly burdened by rules and regulations promulgated by numerous state agencies, and that agencies should provide some flexibility regarding compliance and reporting requirements contained in their rules.

To implement this legislation several changes were made during 1982 in the Joint Committee's Operational Rules found in Appendix B (pages 294-340). Section 220.500(b)(5) adds a final regulatory flexibility analysis to the list of items which must be included in the second notice. This analysis must include a summary of the issues raised by small businesses during the first notice period, and a description of actions taken on any alternatives to the proposed rule suggested by small businesses, including reasons for rejecting any alternatives not utilized. Another change (see Section 220.600(c)) adds to the list of items which should be included in the second notice a brief statement describing which of the methods listed in Section 4.03(a) of the Act will be used by the agency, including reasons for rejecting those methods not utilized. Finally, Section 220.900(c)(6) was added to indicate that regulatory flexibility, when applicable, would be a criterion the Joint Committee would consider in its review of proposed rulemakings.

Also as a result of the Regulatory Flexibility Act, a "clearinghouse" unit in the Department of Commerce and Community Affairs was established to coordinate and monitor regulatory impacts on small businesses. The unit utilizes a business hot-line and targeted mailing lists to provide quick and reliable communications between state government and the small business community. This clearinghouse, the Small Business Office of the Department of Commerce and Community Affairs, should stimulate ongoing business comments of a specific nature which the Joint Committee might not otherwise be aware of in considering rulemaking proposals.

The Joint Committee issued formal statements of objection to four rules during 1982 which did not comply with the provisions contained in the Regulatory Flexibility Act. In July the Joint Committee objected to rulemaking proposed by the Department of Human Rights in conjunction with the Human Rights Commission. These "Interpretive Rules on Handicap Discrimination in Employment" were found objectionable because the Department and Commission did not notify the Small Business Office of the Department of Commerce and Community Affairs as required by Section 4.03(c) of the Administrative Procedure Act. A similar objection to the Department on Aging's proposed adoption of rules 04.60.301, Completed Applications Prior to August 1, 1982; 04.60.302, Payment for Services; 04.60.324, Income; 04.60.325, Fees for

Services; Etc. was issued by the Joint Committee at the November meeting. Another set of proposals by the Department on Aging was also found objectionable at the November meeting for failure to notify the Small Business Office of the Department of Commerce and Community Affairs. The text of these four objections can be found on pages 71, 93, 66, and 67, respectively, of this Annual Report.

Department of Public Health/Environmental Protection Agency

The second exercise of the "veto" power by the Joint Committee occurred in 1982. The Department of Public Health and the Environmental Protection Agency jointly proposed new rules and amendments to existing rules entitled, "Certification and Operation of Environmental Laboratories." This rulemaking would modify the methodologies applicable to analysis of samples from public water supplies, as well as adding new methodology requirements to cover analysis of samples relative to water and land pollution. The rulemaking also proposed to add a new Part pertaining to the analyses of milk and milk products.

The Joint Committee objected to the proposal in December of 1981. Two of the reasons for objection follow:

1. The Department of Public Health and the Environmental Protection Agency failed to submit a proper analysis of the direct economic effect on the industries regulated by the proposed rules and did not provide anticipated effects on the proposing Agencies' budgets. Failure to submit an adequate economic analysis violates Section 7.04 of the Administrative Procedure Act, ch. 127, para. 1007.4, III. Rev. Stat..
2. One section of the proposal would expand the definition of "Environmental Laboratories" to include facilities performing analyses on samples in order to determine the quality of wastewater without demonstrating sufficient need for requiring wastewater laboratories to meet the detailed facility, equipment and employee requirements in the rulemaking, and without an adequate study of the economic effect on industry. The Joint Committee

determined that this inclusion of wastewater laboratories constituted an arbitrary and capricious exercise of the agencies' rulemaking authority and therefore an invalid extension of their statutory authority.

The agencies responded to these objections in March of 1982. The responses included the following:

1. The Agencies submitted estimates of the economic impact of this proposal, which claimed that the rule would not require any additional expenditures by the Agencies. Furthermore, that estimate claimed that any projection of economic impact of these rules on affected industries would be impossible to predict prior to the actual implementation of the rules. Also in response to the objection based on the insufficient economic analysis, the Agencies changed numerous certification requirements, claiming this would reduce the economic impact on affected industries.
2. The Agencies cited a 1980 U.S.E.P.A. study as evidence that existing regulations have allowed Illinois wastewater laboratories to perform inadequately. Based on this study, as well as the modifications proposed by the agencies in response to Joint Committee objections, the Department felt they had adequately justified the need for the requirements and also lessened the costs to industries implementing these rules.

The Joint Committee considered these responses at its April 13, 1982 meeting and found them to be unsatisfactory. Furthermore, at that meeting the Joint Committee determined that:

1. The agencies had violated Section 7.04 of the Administrative Procedure Act, Ill. Rev. Stat., ch. 127, par. 1007.4, by failing to submit an adequate economic analysis; and
2. Requiring wastewater laboratories to meet the detailed personnel, physical facility, equipment and methodology requirements in this rulemaking without demonstrating sufficient need for such requirements and without an adequate study of the economic effect on industry represented an arbitrary

and capricious exercise of the agencies' rulemaking authority and therefore an invalid extension of their statutory authority.

Based on these findings the Joint Committee issued a prohibition of filing pursuant to Section 7.06(a) of the Administrative Procedure Act and Rule 220.950 of the Joint Committee's Operational Rules on April 13, 1982. In response to that Prohibition, the Agencies responded on May 3, 1982 by withdrawing the proposed new rules and amendments to rules entitled "Certification and Operation of Environmental Laboratories."

Review Criteria

The Joint Committee utilizes the criteria for review listed in Section 220.900 of the Joint Committee's Operational Rules (see Appendix B, pages 294-340). The factors which the Joint Committee considers during their systematic review of proposed rulemakings can be summarized as follows:

1. Legal authority for the proposed rulemaking.
2. Compliance of the proposed rulemaking with legislative intent and statutory authority.
3. Compliance with state and federal constitutional requirements and other law.
4. Inclusion of adequate, clear standards and criteria for each exercise of discretionary power.
5. Presence of a statement of justification and rationale for the proposed rulemaking.
6. Consideration of the economic and budgetary effects of the proposed rulemaking.
7. Clarity of the language of the proposed rulemaking.
8. Presence of redundancies, grammatical deficiencies and technical errors in the proposed rulemaking.
9. Compliance with the requirements of the Administrative Procedure Act.
10. Compliance with the requirements of the Rules Division.
11. Compliance with additional requirements imposed by state and/or federal law.

12. Compliance with the agency's rulemaking requirements.
13. Agency responsiveness to public comments received concerning the rulemaking proposal.
14. Compliance with the Business Regulatory Flexibility Act contained in Section 4.03 of the Administrative Procedure Act.

As discussed earlier in this Section, this final criterion only became effective at the beginning of 1982, but has already significantly augmented the scope of review conducted by the Joint Committee, as well as altered the rulemaking proposals of state agencies.

Significant Objections

All statements of objection issued throughout 1982 by the Joint Committee are listed in Section Three of the annual report (pages 64-103). Some of the especially salient issues raised in the objections are discussed here also because of their significance.

In July of 1982 the Joint Committee objected to the Department of Administrative Services' proposed Rules for Acquisition, Management and Disposal of Real Property. The Committee objected to these rules because they conflicted with existing portions of Illinois Revised Statutes and also because the rules required state agencies to conform to the Department's unpublished standard which met the definition of the "rule" contained in Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09). The Department modified the rules by including the previously unpublished standards in the text of the adopted rules, and intends to introduce legislation to remedy the legislative inconsistencies pointed out by the Joint Committee. The text of the objections to this rulemaking proposal appears on pages 64 and 65.

1982 saw the first Joint Committee objection to the filing of internal rules on the basis that the substance of the rules adopted was not proper as described in Section 4.01 of the Illinois Administrative Procedure Act. On June 15, 1982 the Nature Preserves Commission adopted the Internal Rules of Order and Procedure of the Illinois Nature Preserves Commission. In addition to

finding that portions of these internal rules should have been promulgated in accordance with Section 5.01 of the Illinois Administrative Procedure Act, the Joint Committee also objected to certain sections of the rulemaking because, according to the Illinois Natural Areas Preservation Act (Ill. Rev. Stat., 1981, ch. 105, para. 701 et seq.), rules concerning the approval of nature preserve dedications must be promulgated jointly with the Department of Conservation. The Nature Preserves Commission responded to the Joint Committee's objection by repealing one section of the internal rules, which the Joint Committee decided should have been adopted in accordance with Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1981, ch. 127, para. 1005.01) but also disagreed with the Joint Committee's interpretation of the Natural Areas Preservation Act and therefore refused to modify the section of rules concerning the dedication of nature preserves. The specific objections appear on pages 94 and 95.

At its March meeting the Joint Committee objected to the Department of Public Health's proposed rules entitled "State Administration of Maternal and Child Health Projects" which set forth guidelines for Maternal and Child Health Projects eligible for Title V funding from the Social Security Act. The Joint Committee objected to the proposed rulemaking because it would have required local health agencies to file an excessive number of repetitive reports without any specific basis for such a requirement. Not only would the preparation of these reports have resulted in substantial expense for the local agencies, but the rulemaking proposal did not delineate what information was to be included in the required reports. In response to the Joint Committee's objection, the Department modified the proposal by clarifying and reducing the reporting requirements contained in the rulemaking. The exact text of the objections to the State Administration of Maternal and Child Health Projects rules can be found on pages 79 and 80 of this report.

The Joint Committee objected to proposed rules for the Illinois Farm Development Authority at its November meeting. This proposal, among other things, established two loan programs, i.e., the Beginning Farmer Program and the Soil Conservation Loan Program. The Joint Committee objected to one article of the proposal because it did not incorporate the regulations of the Farmers' Home Administration as criteria for approving loans. By not

incorporating the federal regulations, the Joint Committee determined that this rulemaking was inconsistent with the legislative intent of the Illinois Farm Development Act (Ill. Rev. Stat. 1981, ch. 5, par. 1201 et seq.). The Authority responded by refusing to modify their proposal contending that since the Act is unambiguous, the legislative history should not be consulted to create a requirement which is not on the face of the Act. The Authority has, however, agreed to work with the various staffs of the legislature to develop legislation to clarify that the Farm Development Authority is not required to use Farmers' Home Administration guidelines. The text of this objection is located on page 95.

As these objections indicate, the review of rulemaking proposals by the Joint Committee impacts not only the agencies proposing rules, but those affected by the rules. Another result of the review of rulemaking by the Joint Committee is the exposure of obsolete and/or conflicting statutes which can then be repealed or clarified. Thus the continuing review of every rulemaking proposal by state agencies provides great opportunity for significant legislative input into the rulemaking process.

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

Emergency and peremptory rulemaking came under the purview of the Joint Committee in the fall of 1979. The Joint Committee strives to ensure only limited exercise of these rulemakings since the procedures allow agencies to bypass the notice and comment period otherwise required by the Administrative Procedure Act.

During 1982 state agencies adopted 84 emergency rulemakings and 21 peremptory rulemakings. The Joint Committee issued formal certificates of objections concerning 12 of the emergency rulemakings and 3 peremptory rulemakings. In issuing these objections the Joint Committee compared the rationale and substance of the emergency and peremptory rules with the requirements of Sections 5.02 and 5.03 of the Administrative Procedure Act, as well as provisions contained in Sections 230.400, 230.500, 240.500 and 240.600 of the Joint Committee's Operational Rules, and found the objectionable rules to be inconsistent with various sections of these provisions.

According to Section 5.02 of the Administrative Procedure Act, four conditions must exist before an agency can properly exercise emergency rulemaking authority. Not only must an emergency affecting the public exist, but the rule must also be in direct response to that emergency. Thirdly, the agency must face time constraints which make impossible the adoption of the rule through the general rulemaking process described in Section 5.01 of the Administrative Procedure Act. Finally, the agency must make a written statement of how each of these required conditions have been met.

Comparable conditions are specified for the proper adoption of rules via the peremptory rulemaking authority described in Section 5.03 of the Administrative Procedure Act. First, the rules must be mandated by judicial action. Like emergency rules, the agency must also face time constraints which preclude the agency from adopting the rule pursuant to Section 5.01 of the Administrative Procedure Act. The final requirement of Section 5.03 is that the agency cannot have the option of exercising any discretion regarding the content of the rule.

In addition to reviewing these rules for compliance with the procedural requirements, the Joint Committee also examines the rules based on the same criteria utilized in the regular review of proposed rules. Especially in the case of peremptory rules, the review by the Joint Committee may be the only formal external review procedure for the content of the rules.

A recurring problem which the Joint Committee faces is that of agencies exercising emergency rules to confront "self-created" emergencies. In these situations agencies adopt emergency rules only to compensate for delays or other factors over which the agency had control. The Committee has objected to these types of emergency rulemakings on several occasions. See, for example, the objections to the Department of Registration and Education's emergency rules which were promulgated in response to a public act which had been signed for four months prior to the effective date of the counterpart emergency rules on pages 83-88. Other examples of objections issued on this basis can be found on pages 98 (State Board of Elections' Emergency Regulation 8-2), 73 and 74 (Department of Mental Health and Developmental Disabilities' Emergency Parts 113 and 103 respectively). Mental Health's Emergency Part 103 was promulgated in response to a Court Order which enjoined the Department from requiring plaintiff's member agencies to adopt the uniform cost reporting system until the Department promulgated a rule in accordance with the Illinois Administrative Procedure Act requiring the utilization of the uniform cost reporting system. The Joint Committee determined that this was an improper exercise of emergency rulemaking authority and, furthermore, had the Department originally complied with the Administrative Procedure Act, no Court Order would have resulted.

While the number of objections issued regarding emergency and peremptory rulemakings is not large, the mere fact that the Joint Committee reviews these rulemakings may be having an impact on the actions taken by agencies. Careful scrutiny of agencies' use of these extraordinary authorities will continue.

FIVE-YEAR REVIEW PROGRAM

Section 7.08 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. ch. 127, par. 1007.08) requires the Joint Committee to "evaluate the rules of each agency at least once every five years." It further requires the Joint Committee to "group rules by specified areas to assure the evaluation of similar rules at the same time" and to adopt by rules "a schedule for this periodic evaluation." This section also lists fourteen categories, such as natural resources, transportation, business regulation, and government purchasing, which must be included in the schedule.

The Joint Committee implements this legislative requirement through its Five Year Review Program. The review program which was first begun in 1979, is based on the classification of all existing agency rules into a number of subject areas. New rules are added to the classification system when they are adopted by the agencies. Each of these subject areas is scheduled for review during a specific year of the review cycle, and the review often includes rules from a number of different agencies.

The review process is conducted in several different stages. These include:

Initial Stage

This stage involves requesting specific information from the agencies with rules included in the review. The requests usually include items such as statutory authority, costs, and the need for the rule, among others. This stage also includes public hearings on the rules and intensive research by the Joint Committee staff. During this stage, the agencies and the Joint Committee staff often reach agreements concerning problems discovered with the rules. Issues which cannot be resolved during this stage are referred to the Joint Committee for action.

Second Stage

During this stage, a preliminary report is prepared for consideration by the Joint Committee and agency officials. The report includes written agency responses to staff suggestions and recommendations for action.

Third Stage

This stage consists of the formal Joint Committee hearing and the preparation of final reports to the Joint Committee. At the hearing, agency representatives present their position on the recommendations, and the Joint Committee votes to either accept or reject the recommendations, which might include amendments to rules, repeals, or related legislation. This is also the "follow-up" stage for the review. The Joint Committee staff monitors and reports on agency actions and prepares any necessary reports to insure that the Committee's recommendations are being followed.

The Joint Committee completed reviews in five different subject areas during 1982, each of which is briefly discussed below.

Business Regulation

Three final reports were completed covering major portions of this subject area. The reports are contained in three separate volumes, which include: (1) rules of the Department of Agriculture and Public Health , (2) rules of the Department of Revenue, and (3) a third volume which examines fourteen sets of rules from nine state agencies. The 28 sets of rules from the two agencies included in volumes I and II of the review represent approximately one-fourth of the rules classified under the category of "business regulation." The first report includes 79 recommendations for specific action and a discussion of over 400 issues raised by the Joint Committee.

Some of the major issues encountered in the review of the Department of Agriculture and Public Health included:

1. Incorporation by Reference
2. Administrative Searches
3. Overlaps and Conflicts
4. Words and Phrases Intimating Discretion
5. Department of Agriculture's Marketing Procedures
6. Simplicity and Clarity

In the review of the Department of Revenue's rules, the major issues included:

1. Illinois Bell Case (Taxable Revenue)
2. Interest Earned on Refunds on Credit Memoranda
3. Incorporation by Reference of Department of Revenue Rules
4. Use of Statutory Language in Department Rules
5. Accuracy and Currency

The third volume examines rules ranging from the Department of Conservation's "Rules on Commercial Fishing in Lake Michigan," to the Secretary of State's "Rules on the Administration of the Illinois Business Take-Over Act." The report includes 40 recommendations for specific action. The major issues encountered in the review include:

1. Lack of Standards and Criteria
2. Simplicity and Clarity
3. Compliance with Section 6.01 (Form and Publication of Notices) of the Illinois Administrative Procedure Act
4. Accuracy and Currency
5. Judicial Declaration of Invalidity
6. Economic Impact

Vocational and Professional Education

This review dealt with six sets of rules, four promulgated by the State Board of Education and two by the Departments of Corrections and Registration and Education. The final report contains 41 recommendations for specific action. The major issues and problems encountered in this review include:

1. Lack of Standards and Criteria
2. Use of Statutory Language in Rules
3. Overlaps and Conflicts

State Travel

The review in this subject area dealt with eleven sets of rules, including the travel regulations of several different agencies. The Joint Committee included 16 recommendations for action in this area. A number of significant issues and problems were encountered in this review, including the following:

1. Travel rules as Internal Policy
2. Travel rules for the Office of the Lieutenant Governor
3. Travel rules for the State Board of Elections
4. Discrepancies in Maximum Rates of Reimbursement
5. General Exceptions to the Travel Rules
6. Informal Vehicle Rules

Wildlife Management

This report includes 20 of the rules classified under the area of "natural resources" and the subarea of "Wildlife Management." The report includes 2 recommendations for Joint Committee action. Major issues encountered in the review include:

1. Absence of Recommendations
2. Accuracy and Currency
3. Simplicity and Clarity

4. Compliance with Section 6.01 (Form and Publication of Notices) of the Illinois Administrative Procedure Act
5. Words and Phrases Intimating Discretion

Other Subject Areas Under Review

The review of rules in a number of other subject areas has been initiated, as can be seen in Table 2. Preliminary reports have been completed for two additional Business Regulation reviews, including rules of the Illinois Racing Board (Volume IV) and the Department of Insurance (Volume V). In addition, preliminary reports have been completed in the areas of Government Management (State Building Construction and Maintenance) and Financial Institutions.

TABLE TWO: STATUS OF CURRENT FIVE-YEAR REVIEW CATEGORIES

Stage One: Initial Questions <u>And Staff Research</u>	State Two: <u>Preliminary Report</u>	State Three: Final Report <u>And Follow-Up</u>
Human Resources/ Grants for Medical Services	Industry and Labor/ Business Regulation/ Volume Four: Illinois Racing Board	Industry and Labor/ Business Regulation/ Volume One: Department of Public Health and Agriculture
Human Resources/ State Adult Institutions	Industry and Labor/ Business Regulation/ Volume Five: Department of Insurance	Industry and Labor/ Business Regulation/ Volume Two: Department of Revenue
Human Resources/ Public Health	Government Management/ State Building Construction and Management	Industry and Labor/ Business Regulation/ Volume Three: Miscellaneous
Human Resources/ Food Handling and Services	Financial Institutions	Government Management/ State Travel
Education and Cultural Resources/ Special Education		Education and Cultural Resources/ Vocational and Professional Education
Education and Cultural Resources/ Educational Grants and Scholarships		Natural Resources/ Wildlife Management
Education and Cultural Resources/ Cultural Resources		Industry and Labor/ Labor Laws and Consumer Protection
Natural Resources/ Land Pollution Control		
Natural Resources/ Public Water Supplies		
Government Management/ Records and Information Management		
Public Utilities/ Telephone and General Utility		
Transportation/ Railroad and Mass Transit		

COMPLAINT REVIEW PROGRAM

In 1979 the Joint Committee began a complaint review program. This program allows interested parties to make written complaints about agency policies or rules which raise any of the issues explained in Section 260.200 of the Joint Committee's Operational Rules (pages 294-340). The criteria used for a review based on a complaint are similar to the criteria used in the reviews of new and existing rules, and are explained in Section 260.700 of the Operational Rules. The complaint review program focuses on specific issues of public concern, and complements the review of newly proposed rulemaking and the five-year review of existing rules.

The authority to review rules based upon complaints is provided to the Joint Committee through the broad language of Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act. Section 7.04 allows the Joint Committee to "undertake studies and investigations concerning rulemaking and agency rules." Section 7.04 also requires the Joint Committee to "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all state agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy."

Section 7.07 of the Act authorizes the issuance of objections to existing rules and assigns to the Joint Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

As outlined in the Joint Committee's operational rules (pages 294-340) the complaint review process is relatively simple. As complaints are received the Joint Committee staff conducts an initial review to determine the need for a full complaint investigation. Much of the communication received by the Joint Committee requires only the supplying of basic information, copies of rules or referral to the appropriate agency. The Committee also receives inquiries concerning the applicability of the Illinois Administrative Procedure Act as it relates to certain agencies and policies. These requests generally do not

require the same amount of time as do other more complex complaint matters. In situations requiring only a response from the Committee staff, the necessary information is provided. When more difficult situations occur involving a serious legal or substantive issues raised by the public in relation to agency rules the formal complaint review process is begun.

In 1982, the Joint Committee held formal hearings on two complaints. The first concerned the Illinois Industrial Commission's policy of allowing parties to waive the statutory requirement that the Commission prepare written findings of fact and conclusions of law for each decision. A formal hearing resulted in specific recommendations aimed at resolving the issue. The agency refused to comply, however, and a subsequent Joint Committee recommendation calls for legislation to be introduced to put the waiver into compliance, and suggested the Auditor General perform a management audit of fiscal factors affecting this policy.

The second complaint resulting in a formal hearing dealt with a State Board of Education's version of its "Special Education Certification and Approval Requirements and Procedures," and a question arose as to whether or not the publication should be promulgated as a rule under the Illinois Administrative Act. A formal hearing was held and a statement of recommendation was made and published in the Illinois Register. The agency subsequently agreed to comply with these recommendations.

The Joint Committee also received nine other complaints. Of these nine, one complaint was resolved when the agency published notice in the Illinois Register of proposed rulemaking, and another complaint was resolved when the agency agreed to seek enabling legislation. The Joint Committee's involvement ended in one complaint when the complainant brought suit against the agency.

The Joint Committee is still considering a number of complaints. Two of these deal with whether an agency manual should be promulgated as a rule, and another centers around space rental at the State Fairgrounds.

The discussion of the complaints resolved or being considered illustrates the detailed oversight of agency rules conducted by the Joint Committee. The

public is becoming more aware of the complaint review program, and the number of complaints received, reviewed and resolved is expected to increase in the future.

PUBLIC ACT REVIEW

The Illinois Administrative Procedure Act provides that the Joint Committee will maintain "a review program to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking." To implement part of this responsibility the Joint Committee has developed the Public Act Review program to monitor legislation which may affect or require rulemaking.

The review program which was initiated in 1979, monitors every public act passed by the General Assembly and signed by the Governor or those enacted over a gubernatorial veto.

During 1982, 299 public acts were reviewed by the Joint Committee and 70 were found to require additional rulemaking. The review, which is based upon careful analysis of the public act and current rules on file, provides the Joint Committee and the General Assembly with information on the progress of agencies in implementing recently enacted bills. The program also informs agencies when rulemaking may be required. The goal is to encourage prompt rulemaking rather than resort to emergency rules.

With four such reviews conducted by the Joint Committee, some general observations may be made about the responsiveness of agencies to public acts. Agencies disagree frequently with the Joint Committee's initial opinion on whether rulemaking is required. Agencies are not responsive to the Joint Committee surveys, with some agencies delaying responses and some agencies not returning the surveys at all. The majority of agencies have lengthy delays (3-6 months) between the effective date of the legislation and the date when rules are published and finally adopted. A few agencies do monitor legislation closely and propose as soon as possible to implement the public act changes. Again, as in past years, agencies also disagree frequently with the Joint Committee analysis of whether rulemaking is required.

Detailed results of the review are presented in the following two tables. Table 3 summarizes the number of public acts and subsequent rulemakings by agency, while Table 4 lists each of the acts and the responses by the agencies.

TABLE THREE: NUMBER OF 1982 PUBLIC ACTS WHICH
COULD REQUIRE RULEMAKING BY AGENCY

<u>Code Departments</u>	<u>Number of Public Acts Which Could Require Rulemaking</u>	<u>Number of Rulemakings Initiated</u>
Agriculture	2	
Central Management Services	1	1
Children and Family Services	1	
Commerce and Community Affairs	2	
Conservation	4	
Insurance	4	
Labor	2	
Mental Health and Developmental Disabilities	1	
Nuclear Safety	2	
Public Aid	6	1
Public Health	2	
Registration and Education	5	1
Revenue	6	
Transportation	3	
Veteran's Affairs	1	
<u>Elected Officials</u>		
Attorney General	1	
Comptroller		1
Secretary of State	7	
<u>Other Agencies</u>		
Commerce Commission		1
Dangerous Drug Commission	1	
Emergency Services and Disaster Agency		1
Environmental Protection Agency	1	
State Fire Marshal	1	1
Illinois Health Facilities Planning Board	1	
Illinois Industrial Commission	1	
Pollution Control Board	1	
Illinois Racing Board	2	3
State Employees' Retirement System	2	
<u>Educational Agencies</u>		
State Board of Education	7	
Illinois Community College Board	1	
Illinois State Scholarship Commission	1	
<u>Legislative Commissions</u>		
Commission on Intergovernmental Cooperation	1	
TOTAL	70	10

TABLE FOUR: SPECIFIC PUBLIC ACTS, AGENCY AND RESPONSE

Public Act	Subject	Agency	Response
82-745	Health Facilities Planning Act	Department of Public Health	Agree and will propose rules
82-750	Elections - Campaign Disclosure	Health Facilities Planning Board	Do not believe rules are necessary
82-773	Increase Nuclear Power Fees	State Board of Education	Agree w/local govt. reimbursement
		Department of Nuclear Safety	Disagree w/remote monitoring program
82-777	Police Act - Annual Collections	Office of State Fire Marshal	Agree w/boiler safety program
82-787	Public Aid - Birth Certificates	Department of Public Aid	Agree and will propose rules
82-788	Vehicle Code - Amend Terminology	Secretary of State	No Response
82-789	Create Dept. of Central Management	Central Management Services	Do not believe rules are necessary
82-791	Horse Race-Occupational License Fee	Illinois Racing Board	No Response
82-795	Test Cost - Nurses and Detective	Registration and Education	Agree and have proposed rules
82-796	Design Professional Investigating Fund	Registration and Education	No Response
82-885	Insurance Code - Reasonable Insurance Rates	Department of Insurance	Do not believe rules are necessary
82-887	Vehicle Safety - Intrastate Carriers	Department of Public Health Secretary of State	Do not believe rules are necessary
82-894	Assist Disabled Vets - Housing	Department of Veteran Affairs	No Response
82-896	Schools - State Aid Formula Charges	State Board of Education	Do not believe rules are necessary
82-898	School Code - Prorated School Aid	State Board of Education	Do not believe rules are necessary
82-900	Judge Suspend Confidentiality	State Board of Education	No Response
82-901	Radiation - Accreditation for Administrators of	Department of Mental Health and Developmental Disabilities	No Response
82-904	Create Block Grant Board	Department of Registration and Education	No Response
		Commission on Intergovernmental Cooperation	Do not believe rules are necessary
82-911	Food Contract - No Competitive Bidding	State Board of Education	Do not believe rules are necessary

82-916	Public Aid - Adopt Rule by Options	Department of Public Aid	No Response
82-921	DPA - Screen for Nursing Homes	Department of Public Aid	No Response
82-924	Real Estate Research & Education Fund	Department of Registration and Education	No Response
82-939	Work Comp - Revises Rates	Department of Insurance	Agree
82-945	Create Farmland Protection Act	Industrial Commission	No Response
82-949	Bonds - Passenger Transport Vehicle	Interagency Committee on Farmland Preservation (ag)	No Response
82-954	Public Record - Nuclear Waste Agreement	Secretary of State	No Response
82-955	Horse Race - Wagers for Another	Department of Nuclear Safety	Do not believe rules are necessary
82-957	Inspect Senior Citizen Transport	Illinois Racing Board	No Response
82-959	EPA - Define Sporting Activities	Department of Transportation	No Response
82-960	MFN - Pensions - Annuity Increases	Pollution Control Board	Do not believe rules are necessary
82-961	Corporate Funds - State Lottery	State Employees' Retirement System	No Response
82-962	Podiatry Practice - Advertising	Department of Revenue	Do not believe rules are necessary
82-965	Wildlife - Fish Resource Theft	Department of Registration and Education	No Response
82-966	Fish & Wildlife - Buy Evidence	Department of Conservation	Do not believe rules are necessary
82-967	Creates Bingo Control Division	Department of Conservation	Agree and will propose rules
82-968	Control Substances - Look-alike Drugs	Dangerous Drugs Commission	Do not believe rules are necessary
82-971	Pension - Chicago Fire - Tax Multiple	State Employees' Retirement System	No Response
82-972	EPA - Hazardous Waste Disposal	Environmental Protection Agency	Do not believe rules are necessary
82-975	Transfer Juvenile Justice Serv.	Department of Children and Family Services	Agree and will propose rules
82-978	Aeronautics - Financing Airports	Department of Transportation	No Response
82-979	Public Aid - Child & Spouse Support	Department of Public Aid	No Response
82-980	School Code - Accounting Statements	Department of Agriculture	Do not believe rules are necessary
82-984	Vehicle Code - Unannounced Inspections	State Board of Education	Do not believe rules are necessary
82-988	Unemployment Insurance - Pay Child Support	Secretary of State Department of Public Aid Department of Labor	Agree and will propose rules No Response Agree and will propose rules

82-991	Plant Closing - Employee takeover	Department of Commerce and Community Affairs	No Response	No Response
82-992	School Code - Tax on Health Care Serv.	State Board of Education Scholarship Commission	Do not believe rules are necessary	Do not believe rules are necessary
82-993	Snowmobiling - Unsafe Conditions	Department of Conservation	Do not believe rules are necessary	Do not believe rules are necessary
82-998	School Code - Changed Terminology	State Board of Education Illinois Community College Board	Do not believe rules are necessary	Do not believe rules are necessary
82-999	Duplicante ID Care - Misdemeanor	Secretary of State	Agree	Agree
82-1000	Clubs - Notice of No Alcohol	Secretary of State	No Response	No Response
82-1002	Marriage Act - Child Support	Department of Public Aid	No Response	No Response
82-1005	Create Third Party Prescription	Department of Insurance	No Response	No Response
82-1011	License Plates & Fees - Changes	Secretary of State	No Response	No Response
82-1012	Drainage - Highway Assessments	Department of Transportation	Do not believe rules are necessary	Do not believe rules are necessary
82-1013	MFN - ROTA - Petroleum Products Exempt	Department of Revenue	Agree & will propose rules	Agree & will propose rules
82-1017	Unemployment Insurance Act - State Int. Penalties	Department of Labor	No Response	No Response
82-1018	Amends Insurance Code - Group Life	Department of Insurance	No Response	No Response
82-1019	Create Enterprise Zone Act	Department of Commerce and Community Affairs	No Response	No Response
82-1021	Inheritance & Trans. Tax - Exempt. Stepchild	Attorney General	No Response	No Response
82-1022	County Zone Act - Violation - Offense	Department of Revenue	No Response	No Response
82-1023	Revenue Act - Tax Incent. Hist. Buildings	Department of Conservation	No Response	No Response
82-1029	Revenue Act - Prohib. Est. Rts. Overlap Dist.	Department of Revenue	No Response	No Response
82-1035	Amends Munic. Code & Counties - Tax Refund & Disbursements	Department of Revenue	No Response	No Response

BUSINESS REGULATION STUDY

Part of the efforts of the Joint Committee during 1982 included continuing progress on the business regulation project. The project, initially undertaken in 1981, will attempt to catalog, classify and study state regulations which have an impact on business in the state. The project is a joint undertaking of the Joint Committee, the Illinois Commission on Intergovernmental Cooperation, and the Department of Commerce and Community Affairs.

A considerable amount of the work on Phase I (the development and publication of a user-oriented catalog of regulations affecting business) has been completed. Each state agency identified as having regulations on file which affect business has been surveyed for information concerning specific regulations. The survey responses include items such as the title of the rule or regulation, a brief description of the regulations purpose and the type and number of businesses affected. Other items included are the name of the unit within the agency which administers the regulation, the name of an agency contact regarding the regulation, and the written reports or forms required by the regulation. The information presented in the survey responses will be used to complete the catalog entries for each agency regulation.

In addition to completion of the agency survey, a number of draft entries to the business regulation catalog have been completed. As of this writing, approximately one-half of the catalog entries have been completed, and it is anticipated that the final entries will be completed in early 1983. Some difficulties have been encountered in this area, due to the minimal amount of useful data included in some agency survey responses and the limited amount of staff time and resources available to the project. None of these problems are insurmountable, however, and no further delays or future difficulties are anticipated.

A particularly useful indexing system has also been developed for use in the project. The system will allow easy retrieval and maneuverability of the catalog entry data. In addition, it will help simplify categorizing and cross-referencing, and will help insure consistency and accuracy for existing data and future input. The indexing system should also prove highly useful for the second phase of the project, which will include further research and development of the regulatory data.

COURT DECISIONS AND ATTORNEY GENERAL OPINIONS

In Mobil Oil Corporation v. Johnson (66 Ill. Dec 285, 442 N.E. 2d 846, 1982), the Supreme Court considered a crucial area in administrative law concerning the effectiveness of a rule promulgated prior to the enactment of the Illinois Administrative Procedure Act and its relationship with the requirement of due process. Mobil Oil Corporation brought an action under the "Monies Act" (Ill. Rev. Stat. 1977, ch. 127, par. 170 et seq.) to compel the return of approximately \$8 million which it paid under protest pursuant to an assessment by the Department of Revenue under the Use Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 439.1 et seq.). The tax was assessed upon Mobil's use of three "refining fuels", which are produced during the process of refining crude oil. At issue was whether Mobil was prejudiced and denied due process because it was not given proper notice of an apparent change in Departmental policy regarding the taxability of the use of refinery fuels. In support, Mobile argued that the Department had never assessed the use of refinery fuels under the Use Tax Act or the sales of crude oil by Illinois producers under the Retailer's Occupation Tax Act. The circuit court held, inter alia, that the Department had violated the Illinois Administrative Procedure Act in developing its policy and method of imposing the tax.

The Supreme Court reversed, holding that Use Tax Rule 11 adopted by the Department in 1969 clearly expressed Department policy regarding the taxability of refining fuels. The Court determined that the Illinois Administrative Procedure Act did not require republication of the rule and found that the failure of the Department to previously assess the tax did not amount to a policy within the meaning of Section 3.09 of the Act. Thus, the Court held that Mobil had adequate notice of the taxability of the use of refinery fuels and that the Department did not violate the provisions of the Administrative Procedure Act in assessing the tax.

In Board of Education of Hawthorne School District No. 17, Marengo v. Eckmann (103 Ill. App. 3d 1127, 432 N.E. 2d 298, 1982), Section 4.4(b) of the Department of Human Rights' Rules and Regulations with stood a complaint by a local board of education seeking declaratory and injunctive relief. At issue was

the Department's enforcement of its rule prohibiting the board from making a verbatim report of proceedings of a fact-finding conference on a teacher's charge of employment discrimination. The court stated that in determining the validity of a regulation it is uppermost to ascertain whether it furthers the legislative intent of the statute involved. Thus, the court found that since the legislative intent behind the Human Rights Act is to promote voluntary settlement, conciliation and adjustment of discrimination charges, Section 4.4(b) is not inconsistent with the Act, because the fact-finding conference is an opportunity for the Department to gather facts from both parties and promote the settlement or resolution of the discrimination charge. Furthermore, the local board was not denied any due process right by the regulation's prohibition since the fact-finding conference is merely a step in the investigative process and not a full-blown adjudicatory hearing.

In response to the decision of the United States Supreme Court in Edgar v. Mite Corp. and Mite Holdings, Inc. (-US-,73 L.Ed2d 269,102 S. Ct.-1982) holding, the Illinois Business Take-Over Act unconstitutional, the Office of the Secretary of State has proposed for repeal all its rules under the Act (Ill. Rev. Stat. 1981, ch. 121 $\frac{1}{2}$, par 137.51-70).

The Act requires a tender offeror to notify the Secretary of State and the target company of its intent to make a tender offer and of the terms of the offer 20 days before the offer becomes effective. During that time, the offeror cannot communicate its offer to the shareholders, but the target company is free to disseminate information to its shareholders concerning the impending offer. The Act requires all take-over offers to be registered with the Secretary of State, and defines target companies as those corporations of which Illinois shareholders own 10% of the class of securities subject to the takeover offer, or for which any two of the following conditions are met: the corporation's principal office is located in Illinois, the corporation is organized under Illinois laws, or the corporation has at least 10% of its stated capital and paid-in surplus within the State.

The issue arose when MITE Corp., a corporation organized under Delaware laws with its principal office in Connecticut, initiated a tender offer for all outstanding shares of Chicago Rivet and Machine Co., an Illinois corporation,

by filing with the Securities and Exchange Commission (SEC) the schedule required by the Williams Act (15 U.S.C. pars. 78 m(d)-(e) and 78n(d)-(f)). However, MITE did not comply with the Illinois Act but brought an action in federal court seeking a declaratory judgement that the Illinois Act was pre-empted by the Williams Act and violated the Commerce Clause. Although MITE and Chicago Rivet entered into an agreement withdrawing the offer and MITE decided not to make another offer, the Court affirmed that (1) the case was not moot, and (2) the Illinois Act is unconstitutional under the Commerce Clause because it imposes burdens on interstate commerce that are excessive in light of the local interests the Act purports to further. The Court found that Illinois' asserted interests in protecting resident security holders and regulating the internal affairs of Illinois corporations were insufficient to outweigh such burdens.

The case of Sahara Coal Company, Inc. v. Illinois Department of Mines and Minerals (103 Ill. App. 3d 115, 431 N.E. 2d 394, 1982) presented several fundamental issues in the law of administrative review in Illinois: Sahara Coal Company wished to expand its mining operations to a neighboring tract, so pursuant to the Surface-Mined Land Conservation and Reclamation Act (Ill. Rev. Stat. 1979, ch. 96½, pars 4504, 4506) applied to the Department for a permit. The County Board of Saline County did not, however, request a hearing and none was held.

Although Section 5(f) of the Act contemplates a hearing only where requested by the county board, the Department did, however, solicit and accept expert opinions from its staff, from people associated with the Sahara proposal, and from independent sources. Acting upon the scientific data thus amassed, the Department denied Sahara's application, in October 1979, giving reasons for the decision.

The Circuit Court of Saline County held, in a suit brought by Sahara for administrative review, that the Department's denial was against the manifest weight of the evidence in the Department's administrative record and directed the immediate issuance of a strip mining permit.

At issue was the Department's Rule 1104, which sets out the Department's requirements for reclaiming certain strip-mined land. That rule sets out standards for reclamation when the Director determines that the land to be affected is:

(1) capable of being reclaimed for row-crop agricultural purposes based on United States Soil Conservation Service Soil survey classifications. . .

(2). . .that the optimum future use of the land affected is for row-crop agricultural purposes.

Rule 1104 allows the Director to:

alter the slope and texture requirements under this Rule only upon a clear and convincing showing that to vary such requirements would better effectuate the purposes of this Act than would enforcing the standards herein.

The Director denied Sahara's application and the variance based on the determination that the reclamation proposal was not "clearly and convincingly" superior to one which would conform to Rule 1104.

In searching the record for evidence to support the Director's decision, the court found no evidence to support the Director's statement that the optimum use of the land was row-crop agriculture. Thus, the Department's application of Rule 1104 to this land was contrary to the evidence in the administrative record.

However, the Court further held that in order to maintain the proper distribution of power between the courts and agencies, administrative review is limited only to consideration of the record to determine support for agency action. Therefore, the trial court's decision to exercise the Department's authority by issuing an immediate permit was reversed.

On June 2, 1982, the Circuit Court of the Seventh Circuit, Sangamon County, enjoined the Department of Mental Health and Developmental Disabilities (DMHDD) from requiring not-for-profit mental health corporations organized

under Illinois law to adopt its uniform cost reporting system. (Illinois Association of Community Mental Health Agencies v. Pavkovic, No. 82-CH-119) Under Section 34 of the Act describing the Department's duties (Ill. Rev. Stat. 1981, ch. 91½, par. 100-34) the Department has the authority to make grants-in-aid to community clinics and agencies for psychiatric or clinical services, training, research and other mental health or retardation programs. Prior to April of 1982, the Department provided funds to member agencies in accordance with grant agreements between the Department and recipient agencies, agreements which incorporated by reference the Manuals for Grants for Community Programs, published in March of 1980.

In April of 1982, however, the Department sent grant agreements for fiscal year 1983 to members agencies which changed the reporting and accounting requirements by requiring the adoption of the uniform cost reporting system. The court, in preliminarily enjoining the Department, found that the adoption of this system was not merely a statement concerning the internal management of the Department or a prescription of a standardized form, but is an agency statement of general applicability that implements, applies, interprets or prescribes Department policy and therefore is a "rule" as defined by Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09). The court enjoined the Department from requiring members agencies to adopt the uniform cost reporting system until it complied with the Administrative Procedure Act, or until further order of the court.

The Illinois Supreme Court decided an important jurisdictional matter relating to the powers of the Environmental Protection Agency and the Pollution Control Board. At issue were Board Rules 211 and 213, adopted pursuant to Section 4(g) and 39(a) of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111½, pars. 1004(g) and 1039(a)), imposing procedures on the Agency for the transfer of certain solid waste management permits and the issuance of supplemental development permits to a transferee.

In Village of Hillside v. John Sexton Sand, Etc. (105 Ill. App. 3d 533, 434 N.E. 2d 482, 1982), Hillside and Cook County challenged the transfer of solid waste management permits and the issuance of a supplemental development permit to the transferee by the Agency. The Court found that although the

Act requires the Board to adopt rules requiring permits and to set substantive standards under which the Agency may issue such permits, it is the purpose of the Agency to establish procedures for the administration of the permit system to ensure that those standards are met. Thus, the Agency is authorized to determine if a permit should issue or be transferred for a refuse facility and to adopt appropriate procedures. The Board had exceeded the scope of its statutory authority by requiring the Agency to adopt procedures or impose procedures on it for issuing or transferring permits.

During the course of the Five-Year Review of the Rules and Regulations of the Capital Development Board, Joint Committee and Board staff had a continuing dialogue over the Board rules governing the suspension of prequalification statutes of contractors, architects/engineers, and issuance and surety companies. The Joint Committee's position is that prequalification is a "license" under Section 3.04 of the Illinois Administrative Procedure Act, and as such, must be governed by the detailed hearing requirements for contested cases set forth in Sections 10-14 of the Act.

In Fitch/LaRocca Associates, Inc. v. Skinner (106 Ill. App. 3d 522, 436 N.E. 2d 17, 1982), the Court took the Joint Committee's position and held that since prequalification of architects on state construction contracts is required by law, prequalification is therefore a license under the Act and can be suspended only in a hearing held under the contested cases procedure of the Act, and not under the less formal hearing provided by Board rules. The Board has published new suspension procedures which provide for an adversary hearing wherein an entity may wish to be represented by legal counsel, present witnesses and evidence and arrange for the production of transcripts.

In Heavner v. Illinois Racing Board, (103 Ill. App. 3d 1020, 432 N.E. 2d 290, 1982) the Racing Board appealed from a circuit court decision in an administrative review proceeding which reversed a Board decision to disqualify a horse from a particular race. The Court affirmed that although the Board had disregarded several violations of its own rules in deciding that a horse was not properly entered in light of the fact that one individual acted both as assistant secretary and patrol judge (Rule 6.04), that the plaintiff was not allowed a more favorable entry date (Rule 9.10), and "condition books" were

not published 24 hours before entry closings for the race (Rule 9.11), these violations of the rules did not operate to prejudice the plaintiff. However, the Court held that the Board's violation of Rule 12.21 whereby no steward was present when the entry box was opened and no horseman or official representative of the horseman was present was an unreasonable arbitrary violation, as the question of entry of plaintiff's horse was at issue and was therefore manifestly prejudicial to the plaintiff necessitating reversal of the Board's decision to disqualify the horse. The Court concluded that where an administrative agency adopts rules and regulations under its statutory authority for carrying out of its authorized duties, it is bound by those rules and cannot arbitrarily disregard them or apply them in a discriminate manner.

Another decision concerning an administrative agency's application of its rules arose in Biogenetics, v. Department of Public Health (89 Ill. 2d92, 431 N.E. 2d 1042, 1982). The Director of the Department had suspended the license of Biogenetics, Ltd., an ambulatory surgical treatment center (ASTC) licensed to perform first trimester abortions. Contrary to the interpretation of the Department, the Court held that the term "qualified" personnel, as used in Rule 6.1, is not synonomous with the word "licensed," but means merely "competent" to properly operate the service programs for which the facility is licensed. Thus, where a foreign educated physician did not hold a physician's assistant certificate, she was nonetheless qualified for the duties she performed under direct supervision of a licensed physician and her employment was not in violation of the rule that sufficient qualified personnel are required to operate the facility. Furthermore, the Court stated that whether a violation of the Act and rules promulgated thereunder is "substantial" so as to warrant disciplinary action, the centrality of the rule to the statutory scheme is not the sole determinant; the agency must also consider the duration of the violation, number of occasions on which it occurred, whether it was willful or the result of negligence, whether actual harm could have or did occur, the likelihood of reoccurrence and the need to discourage others from similar actions. Thus, the Court held that although a licensed sister-state physician had not obtained his Illinois license, permitting him to perform abortions at an Ambulatory Surgical Treatment Center, there was no violation of the Act or rules because staff members were unaware he had misstated this fact and no harm resulted from nor was likely to result from the error.

On September 24, 1982, the Department of Public Health promulgated rules concerning the Sanitation of Retail Food Stores (77 Ill. Adm. Code 760) to achieve compliance with Federal Food Service Regulations. Section 750.10 defined a "regulatory authority" as "the State and/or local enforcement authority or authorities having jurisdiction over the food service establishment." On October 19, 1982 the Attorney General opined that local boards of health were allowed to contract with the Illinois Department of Public Health with respect to the Food Sanitation Program. (Attorney General Opinion 82-035, October 19, 1982) Thus, the rules did not exceed the authority given the Department by Section 55.12 of the Civil Administrative Code (Ill. Rev. Stat. 1981, ch. 127, par. 55.12) nor were in conflict with Section 11 of the Sanitary Inspection Act (Ill. Rev. Stat. 1981, ch. 56½, par. 77) or Section 21 of the Illinois Food Drug and Cosmetic Act (Ill. Rev. Stat. 1981, ch. 56½, par. 521). Thus, the Attorney General concluded that the contract entered into between the Vermilion County Board of Health and the Illinois Department of Public Health was valid pursuant to the Department's rules of the Food Sanitation Program.

On January 14, 1982, the Department of Public Aid adopted Rules 3.5161, 3.5171, 3.5181 and 3.5191. These rules established the methodology of determining payment standards and grant amounts for general assistance recipients in Cook County. The adopted version established grant amounts of \$162 for those recipients determined to be unemployable, and \$141 for those determined to be employable.

However, on January 28, 1982, the U.S. District Court for the Northern District of Illinois entered an order in the case of Illinois Welfare Rights Coalition v. Miller (81 C 7118) requiring the Department to increase the February payments for employable from \$141 to \$162 and enjoining the Department from paying less in the future to employable General Assistance recipients than to unemployable recipients.

On February 26, 1982, the Department published a peremptory rulemaking setting the grant amount at \$162 for all General Assistance adult cases for the months of January and February. Also, on that date, the Department published identical proposed and emergency rulemakings, effective March 1

through June 30, setting the grant amounts at \$139. The Department stated that, notwithstanding the court order, if the level of \$162 is continued, the Department would exhaust its appropriation for such grants no later than May. The \$139 represents the amount of funds available divided by the number of recipients and would only be in effect from May to June 1982. On February 24, 1982 a state court enjoined the Department from lowering the grant amount from \$162 to \$139.

In Estep v. Department of Public Aid (92 Ill 2d 510, 442 N.E. 2d 148, 1982), recipients of general assistance benefits brought action against the Department seeking declaratory judgement that the proposed reductions in Emergency Rule 3.5191 violated the Public Aid Code and Section 5.02 of the Illinois Administrative Procedure Act. The Court held that because the strict subject of controversy was the propriety of an injunction order which was tailored only to May and June of 1982, the passage of time beyond those months rendered the controversy on appeal moot.

However, the majority opinion was accompanied by a strong dissent, which questioned the Court's evasion of the issue of underlying legal rights of the parties. In an actual as well as practical sense, the subject of the controversy was the monetary amount which the Department owed the plaintiffs for May and June. To hold that this case is mooted by the expiration of the order is tantamount to saying that the amount owing in May ceases to be owing altogether once May ends. Thus, although the emergency rule has expired, it appears to be clear that the Department's use of the emergency rulemaking procedures was probably improper.

SECTION TWO:

STATISTICAL SUMMARY

DISCUSSION

This section contains a statistical summary of the rulemaking actions of Illinois agencies and objections issued by the Joint Committee during 1982. A number of the statistical tables compare 1982 data to the data collected in 1978, 1979, 1980 and 1981 to help reveal possible statistical trends in the rulemaking processes of Illinois agencies.

Table Five contains the number of proposed, emergency and peremptory rulemaking by individual agencies. Seven agencies, producing twenty or more rules each, accounted for 51% of the total. And, the following four agencies, each of which produced twenty-five rules or more, accounted for 38% of the total: Department of Children and Family Services, Conservation, Public Aid and Public Health. Emergency rulemaking was dominated by the Department of Corrections and Public Health with fifteen emergency rules each. A total of twenty-one peremptory rules were produced by eight agencies, with the Department of Public Aid and the Pollution Control Board producing six and seven respectively.

Table Six presents a comparison of emergency and peremptory rules for 1980, 1981, and 1982. No discernible pattern is evident as yet in these data. Because these rules are implemented by the agency without opportunity for public comment, it is hoped that future years may see a reduction in emergency rulemakings. The number of peremptory rules has been smaller than expected. This seems to be the result of federal block grants which have returned more decision making to the states.

Table Seven presents a comparison of general rulemaking by agency for 1978 through 1982. No discernible pattern is evident from this data. However, as data collection continues, and collection methods are improved, it is hoped meaningful trends will begin to take shape.

Table Eight presents objections issued by the Joint Committee in 1982 to agency rules. Total statements of objection have increased from sixty-two for 1981 to ninety-eight for 1982 (as seen on this table). This increase is a result of exhaustive five year reviews being completed in 1982 for several agencies including those showing high totals here: Departments of Labor, Registration and Education, and the State Board of Education.

Table Nine presents agency responses to Joint Committee statements of objection for 1982. Out of ninety-eight total objections issued by the Joint Committee (see Table Ten) forty-six (46%) have been resolved through an agency agreement to modify or amend the rule in question.

Table Ten presents five years of agency replies to Joint Committee objections to various rules. Agency agreement to modify or amend the offending rule has remained at between 43% to 47%. There may be a pattern of fewer agency refusals to take action on staff statements of objection.

The overview should provide some general indications of the extent of the Joint Committee's effort to improve and monitor the rulemaking process, and the impact of the Committee on agency rulemaking in Illinois. The specific substantive issues which are indicated in the actual statements of objection in the next section of this report should balance the statistical presentation in this section.

TABLE FIVE: RULEMAKINGS BY AGENCY FOR 1982

<u>Code Department</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Administrative Services	1		
Aging	4	1	
Agriculture	24		
Central Management Services	3	2	
Children & Family Services	26	4	
Commerce and Community Affairs	8		
Conservation	33	3	
Corrections	15	15	3
Energy and Natural Resources	2		
Human Rights	4		
Insurance	13	2	
Labor	8		1
Law Enforcement	1		
Mental Health & Developmental Disabilities	3	2	
Mines and Minerals	6	3	
Nuclear Safety	3	1	
Personnel	9	3	
Public Aid	40	4	6
Public Health	92	15	1
Registration and Education	16	5	
Rehabilitation Services	6	1	
Revenue	14	3	
Transportation	5		
<u>Constitutional Offices</u>			
Attorney General	3		
Auditor General	4		
Comptroller	4		1
Secretary of State	14	1	
<u>Miscellaneous Agencies</u>			
Commissioner of Banks and Trust Companies	6	1	
Capitol Development Board	3		
Illinois Commerce Commission	21	2	1
Dangerous Drugs Commission	3		
Illinois Educational Facilities Authority	2		
State Board of Elections	7	2	
Emergency Services and Disaster Agency	9	1	
Environmental Protection Agency	18		
Illinois Farm Development Authority	1	1	

	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Office of the State Fire Marshal	7	2	
Guardianship and Advocacy Commission	2		
Illinois Health Finance Authority	1		
Illinois Human Rights Commission	1		
Illinois Industrial Commission	3	2	
Illinois State Board of Investments	1		
State Mandates Board of Appeals	1	1	
Nature Preserves Commission			1
Department of Law Enforcement Merit Board	1		
Pollution Control Board	18	1	7
Prisoner Review Board	1		
Illinois Racing Board	22	2	
Office of the Commissioner of Savings and Loan Associations	1		
State Employees' Retirement System	4	1	
<u>Education</u>			
State Board of Education	3		
Board of Trustees of the State Community College of East St. Louis	2		
Illinois Community College Board	1		
Higher Education Travel Control Board	2		
Illinois State Scholarship Commission	4	2	
<u>Legislative Agencies</u>			
Joint Committee on Administrative Rules	1		
Energy Resources Commission	1		
Legislative Information System	2	1	
TOTAL	510	84	21

TABLE: SIX
COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING*
BY AGENCY FOR 1980 THROUGH 1982

*Agencies with no rules are omitted

<u>Agency</u>	<u>Emergency</u>			<u>Peremptory</u>		
	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
<u>Code Departments</u>						
Aging	1	1	1	1		
Agriculture	2	1				
Central Management Services			2			
Children & Family Services	2		4		1	
Conservation	13	13	3			
Corrections	4	2	15		1	3
Financial Institutions	2	2				
Human Rights	1					
Insurance	4	2	2			
Labor	1	3				1
Mental Health & Developmental Disabilities	0	1	2			
Mines & Minerals	1	1	3			
Nuclear Safety			1			
Personnel	4	5	3			
Public Aid	4	2	4	5	22	6
Public Health	11	1	15			1
Registration and Education	2	2	5			
Rehabilitation Services			1			
Revenue	9	2	3			
Transportation	2					
<u>Constitutional Offices</u>						
Comptroller	1					1
Secretary of State		2	1			
<u>Miscellaneous Agencies</u>						
Commissioner of Bank and Trust Companies	3		1			
Capital Development Board	2					
Illinois Commerce Commission	5		2			1
Dangerous Drugs Commission	1					
State Board of Elections	4	4	2			
Emergency Services and Disaster Agency			1			

	<u>Emergency</u>			<u>Peremptory</u>		
	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Environmental Protection Agency	3	2				
Illinois Farm Developmental Authority			1			
Office of the State Fire Marshal	1		2			
Illinois Industrial Commission	1	1	2			
State Mandates Board of Appeals			1			
Nature Preserves Commission						1
Law Enforcement Merit Board	1					
Pollution Control Board	1	3	1	4	3	7
Governor's Purchased Care Review Board	1					
Illinois Racing Board	2	2	2			
Office of the Commissioner of Savings and Loan Associations	1	1				
State Employees' Retirement System	3	1	1			
Statewide Health Coordinating Council		1				
<u>Education</u>						
State Board of Education	3	1		7		
Illinois Board of Higher Education		1				
Board of Regents		1				
Illinois State Scholarship Commission		1	2			
University of Illinois		1				
<u>Legislative Agencies</u>						
Legislative Information System	1		1			
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	97	60	84	17	27	21

TABLE SEVEN

COMPARISON OF GENERAL RULEMAKINGS BY AGENCY FOR 1978 THROUGH 1982*

*Agencies which had no rules are omitted

General Rulemakings

<u>Agency</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
<u>Code Departments</u>					
Administrative Services	1		7	7	1
Aging	5	1	6	6	4
Agriculture	14	17	14	16	24
Central Management Services					3
Children & Family Services	2	2	60	1	26
Commerce & Community Affairs				1	8
Conservation	76	92	75	108	33
Corrections	82	23	38	24	15
Energy and Natural Resources					2
Financial Institutions	1	10	8	3	
Human Rights				5	4
Insurance	15	14	17	13	13
Labor	5	6	3	7	8
Law Enforcement	2		1		1
Local Government Affairs	1		3		
Mental Health and Developmental Disabilities	8	13	4	8	3
Mines and Minerals	4		5	5	6
Nuclear Safety			1	2	3
Personnel	10	9	9	9	9
Public Aid	46	56	47	66	40
Public Health	42	43	55	44	92
Registration & Education	11	11	22	15	16
Rehabilitation Services			3	1	6
Revenue	11	16	24	45	14
Transportation	13	13	13	17	5
Veterans' Affairs	1	2	2	2	

Constitutional Offices

Attorney General	3	1	2		3
Auditor General	7	5	2	1	4
Comptroller	1	2	4	3	4
Secretary of State	15	21	12	26	14
Treasurer	1	1			

Miscellaneous Agencies

Abandoned Mined Lands Reclamation Council				1	
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General Rulemakings

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Commissioner of Banks & Trust Companies	2	5	3		6
Capital Development Board	2	1	3		3
Civil Service Commission				2	
Commerce Commission				10	21
Criminal Justice Information Council	1	2			
Dangerous Drugs Advisory Council				2	
Dangerous Drugs Commission				2	3
Education Facilities Authority			1		2
State Board of Elections	6	1	8	3	7
Emergency Services and Disaster Agency				2	9
Environmental Protection Agency	7	12	10	16	18
Fair Employment Practices Commission	2	3			
Farm Developmental Authority					1
Office of the State Fire Marshal	1	2	1	1	7
Guardianship & Advocacy Commission			2	1	2
Health Facilities Authority	5	2		1	
Health Facilities Planning Board		1			
Health Finance Authority		1	5	1	1
Housing Development Authority			1		
Human Rights Commission				1	1
Industrial Commission	4	1	3	2	3
State Board of Investment		3	1		1
Law Enforcement Commission				2	
Local Government Records Commission		1			
Lottery Control Board		2			
State Mandates Board of Appeals					1
Medical Center Commission		1			
Institute of Natural Resources		1	1	2	
Law Enforcement Merit Board	2	2	1		1
Pollution Control Board	18	11	18	13	18
Prisoner Review Board					1
Governor's Purchased Care Review Board	1	6	2	1	
Racing Board	10	14	19	10	22
Office of the Commissioner of Savings and Loan Associations	3	4	1	7	1
State Employees' Retirement System	2	3	5	3	4
State Fair Agency		4			
Statewide Health Coordinating Council	4	1		2	

General Rulemakings

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
<u>Education</u>					
State Board of Education	3	4	9	8	3
Illinois Board of Higher Education		3	2	5	
Board of Regents				2	
Board of Trustees of the State Community Colleges of East St. Louis					2
Community College Board	17	11	19		1
Higher Education Travel Control Board		1	1	1	2
Illinois State Scholarship Commission				11	4
University Civil Service Merit Board				3	
University of Illinois				1	
<u>Legislative Agencies</u>					
Aggregate Mining Problems Study Commission				1	
Joint Committee on Administrative Rules	3	5	1	1	1
Cities & Village Municipal Problems Commission				1	
County Problems Commission				1	
Joint Condominium Study Commission				1	
Energy Resource Commission				1	1
Legislative Information System	1		2		2
State Council on Nutrition				1	
Select Joint Committee on Regulatory Agency Reform				2	
Travel Control Board	1	1		1	
Commission to Visit & Examine State Institutions				1	
Mississippi River Parkway Commission				1	
	<hr/> 472	<hr/> 467	<hr/> 556	<hr/> 563	<hr/> 510

TABLE EIGHT: STATEMENTS OF OBJECTION
ISSUED IN 1982 TO AGENCY RULES

Agency	Total Statements of Objection	General Rulemakings Objected to	Emergency Rulemakings Objected to	Peremptory Rulemakings Objected to	Existing Rules Objected
<u>Code Departments</u>					
Administrative Services	1	1			
Aging	2	2			
Agriculture	1	1			
Central Management Services	2				2
Children and Family Services	1	1			
Conservation	1		1		
Corrections	3				3
Human Rights	2	2			
Insurance	1		1		
Labor	10			1	9
Mental Health and Developmental Disabilities	3	1	2		
Public Aid	1	1			
Public Health	6	6			
Registration and Education	10		4		6
Revenue	2		1		1
<u>Constitutional Offices</u>					
Attorney General	4				4
Secretary of State	1	1			
<u>Miscellaneous Agencies</u>					
Illinois Commerce Commission	2			1	1
State Board of Elections	5	3	2		
Illinois Farm Development Authority	1	1			
Office of the State Fire Marshal	1		1		
Illinois Human Rights Commission	1	1			
Illinois Industrial Commission	1	1			
Illinois Liquor Control Commission	3				3
Nature Preserves Commission	1			1	
Office of the Commissioner of Savings and Loan Associations	1	1			
<u>Educational Agencies</u>					
State Board of Education	29				29
Illinois State Scholarship Commission	2	2			
TOTALS	98	25	12	3	58

TABLE NINE: AGENCY RESPONSES TO JOINT COMMITTEE OBJECTIONS

<u>Code</u>	<u>Departments</u>	<u>Refuse</u>	<u>Modify or Amend</u>	<u>Withdraw or Repeal</u>	<u>Pending</u>
	Administrative Services	1	1		
	Aging		2		
	Agriculture	1			
	Central Management Services		2		
	Children and Family Services		1		
	Conservation			1	
	Corrections		2	1	
	Human Rights	1	1		
	Insurance	1			
	Labor				10
	Mental Health and Developmental Disabilities	2	1		
	Public Aid			1	
	Public Health	2	2	2	
	Registration and Education	4			6
	Revenue	1			1
<u>Constitutional Offices</u>					
	Attorney General		4		
	Secretary of State		1		
<u>Miscellaneous Agencies</u>					
	Illinois Commerce Commission			1	1
	State Board of Elections	2	3		
	Illinois Farm Development Authority	1			
	Office of the State Fire Marshal	1			
	Illinois Human Rights Commission	1			
	Illinois Industrial Commission		1		
	Illinois Liquor Control Commission				3
	Nature Preserves Commission	1		1	
	Office of the Commissioner of Saving and Loan Association		1		
<u>Educational Agencies</u>					
	State Board of Education	1	21	2	5
	Illinois State Scholarship Commission		2		
	TOTAL	18	45	9	26

TABLE TEN: COMPARISON OF AGENCY RESPONSES
TO OBJECTIONS FROM 1978 THROUGH 1982

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
NUMBER OF OBJECTIONS ISSUED	72	65	55	62	98
AGENCY RESPONSES:					
Withdrawn or Repealed	14 (19.4%)	2 (3.0%)	5 (9.1%)	8 (12.9%)	9 (9.2%)
Modified or Amended	34 (47.2%)	30 (46.2%)	24 (43.6%)	27 (43.5%)	45 (45.9%)
Refusal	24 (33.3%)	33 (50.8%)	26 (47.3%)	21 (33.9%)	18 (18.4%)
Pending	0	0	0	6 (9.7%)	26 (26.5%)

SECTION THREE

SPECIFIC OBJECTIONS AND RECOMMENDATIONS ISSUED

This section contains a comprehensive listing of each of the specific statements of objection and statements of recommendation issued by the Joint Committee during 1982. This listing is arranged by agency and in alphabetical order. Arranging the objections and recommendations in this order facilitates the location of specific issues of interest to anyone using this report.

STATEMENTS OF OBJECTION TO PROPOSED RULES

Code Departments

Department of Administrative Services

Rules for Acquisition, Management and Disposal of Real Property

Initial Publication in Illinois Register: December 18, 1981

Date Second Notice Received: June 2, 1982

Joint Committee Objection: July 14, 1982

Specific Objections:

1. Sections 1.20 A(1) and 2.20. These sections require that only executive agencies are subject to the Department's authority over leasing property.

The Joint Committee objects to Sections 1.20 A(1) and 2.20 of this rulemaking because the Department has failed to fulfill the legislative mandate delegated by Chapter 127, paragraph 63b13.2 of the Illinois Revised Statutes. The proposed rules require that only executive agencies are subject to DAS authority. However, the statute states that one of the powers and duties of the Department is "[t]o lease office and storage space for all agencies of the State." This section of the statute that confers the duty of leasing on the Department does not distinguish among the varieties of State agencies (Constitutional; legislative, executive, or judicial; elected or appointed) in specifically assigning the leasing function to the Department.

2. Sections 3.30 and 3.70 F which require agencies to conform to the Department's unpublished standards regarding planning and improvement of offices.

The Joint Committee objects to Sections 3.30 and 3.70 F of this rulemaking, which require agencies to "conform to DAS published standards" when planning or improving office space, size, and layout. The Joint Committee determined that these standards meet the definition of "rule" contained in Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1003.09) because they describe an "agency statement of general applicability that implements, applies, interprets or prescribes law or policy...."

Furthermore, because these standards are not Federal Regulations or trade association guidelines within the meaning of Section 6.01 of the Act, they cannot be incorporated by reference by filing with the Secretary of State or the Illinois State Library under Section 6.01(b).

3. Section 3.70, which allows for both permanent and temporary improvements to rental space for State use.

The Joint Committee objects to Section 3.70 of this rulemaking because it contains provisions which allow for both temporary and permanent improvements to rental space for State use, in violation of the Fraud in Public Contracts Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.51 et seq.). Section 2 of this statute requires that the State have title to property before expending money on that property for improvements. Section 3.70 of the rulemaking, however, allows for both temporary and permanent improvements to rental space for State use.

4. Section 1.20 A.(3). This Section exempts only the Department of Conservation, Transportation, Mines and Minerals, and Agriculture from the prohibition against leasing State land without Department approval.

The Joint Committee objects to Section 1.20 A.(3) because it conflicts with the statutorily described powers and duties of the Department of Mental Health and Developmental Disabilities contained in Chapter 91½, paragraphs 100-23 and 100-24 of the Illinois Revised Statutes. These sections of the statute allow the Department of Mental Health and Developmental Disabilities to "make leases for land or other property" necessary for its use, and to "grant leases for land or other property" not necessary for its purposes. Furthermore, the statute allows the Department of Mental Health and Developmental Disabilities to "transfer jurisdiction of any realty" under its control, to another Department or State agency when approved by the Governor.

Date Agency Response Received: September 28, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection(s)/Refusal to Modify

Publication as Adopted in the Illinois Register: October 22, 1982

Effective Date: October 13, 1982

Department on Aging

Proposed Amendment of Rules: 04.60.300, Determination of Eligibility; 04.60.310, Applications; 04.60.320, Eligibility Requirements; 04.60.322, Need for Long-Term Care; and 04.60.530, Provider Responsibilities

Initial Publication in Illinois Register: July 23, 1982

Date Second Notice Received: October 18, 1982

Joint Committee Objection: November 17, 1982

Specific Objection(s):

1. The proposed rules are in response to Benson v. Blaser. Since the court order establishes policy regarding penalty payments, such policy should be included in these rules in compliance with Section 3.09 of the IAPA.

The Joint Committee objected to the Department on Aging's proposed rules because the Department did not include policies regarding the penalty payments ordered in Benson v. Blaser thereby violating Section 3.09 of the IAPA.

2. Section 4.03(c) of the IAPA provides that prior to publication of the first notice, "...the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses."

The Joint Committee objected to the Department on Aging's proposed rules because the Department failed to provide notice to DCCA prior to publishing these rules and thus did not comply with Section 4.03(c) of the IAPA.

Date Agency Response Received: December 1, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection(s)

Publication as Adopted in the Illinois Register: December 10, 1982

Effective Date: December 1, 1982

Proposed Adoption of Rules: 04.60.301, Completed Applications Prior to August 1, 1982; 04.60.302, Payment for Services; 04.60.324, Income; 04.60.325, Fees for Services; Etc.

Initial Publication in Illinois Register: July 23, 1982

Date Second Notice Received: October 18, 1982

Joint Committee Objection: November 17, 1982

Specific Objection(s):

1. The proposed amendments to rules are in response to Benson v. Blaser. Since the court order establishes policy regarding penalty payments, such policy should be included in these rules in compliance with Section 3.09 of the IAPA.

The Joint Committee objected to the Department on Aging's proposed amendments to rules because the Department did not include policies regarding the penalty payments ordered in Benson v. Blaser thereby violating Section 3.09 of the IAPA.

2. Section 4.03(c) of the IAPA provides that prior to publication of the first notice, "...the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses."

The Joint Committee objected to the Department on Aging's proposed amendments because the Department failed to provide notice to DCCA prior to publishing these rules and thus did not comply with Section 4.03(c) of the IAPA.

3. The Department's "Objection Proceeding" did not guarantee procedural due process rights because a client may be terminated for nonpayment of fees before a hearing is held and compensation for past harm is not available to one class of applicants and one class of recipients.

The Joint Committee objected to Sections 04.60.610 through 04.60.650 because the objection procedure violates certain procedural due process rights of the applicant/client.

Date Agency Response Received: December 1, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection(s)

Publication as Adopted in the Illinois Register: December 10, 1982

Effective Date: December 1, 1982

Department of Agriculture

Repeal, Paints and Oils Regulations (8 Ill. Administrative Code Part 400), Section 400.10 (Scope and General Principles)

Initial Publication in Illinois Register: October 30, 1981

Date Second Notice Received: December 21, 1981

Joint Committee Objection: January 20, 1982

Specific Objection:

Proposed repeal of rules contained in Section 400.10. These rules regulate persons who combine ingredients to formulate a paint or oil. The Act which was passed in 1917 and the rules which became effective in 1928 are out of date due to current methods of manufacturing paints and oils. The Department does not now have, nor have they had for some time, a program to regulate standards for paints and oils.

The Joint Committee objects to the repeal of these rules because, despite their inoperability, the Department is statutorily obligated by the Paints and Oils Act (Illinois Revised Statutes, Chapter 121 1/2, paragraphs 81-95) to promulgate rules under these statutes. Repealing these rules constitutes evading statutory requirements. Furthermore, the Joint Committee recommends that legislation be introduced to repeal Ch. 121 1/2, Section 81 et seq.

Date Agency Response Received: February 22, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: February 26, 1982

Effective Date: February 9, 1982

Department of Children and Family Services

Part 431, Confidentiality of Personal Information of Persons Served by the Department; Repeal Part 1.3, Child Protective Services

Initial Publication in Illinois Register: July 9, 1982

Date Second Notice Received: August 30, 1982

Joint Committee Objection: September 17, 1982

Specific Objection:

The Department does not indicate in Section 431.3 that an "indicated report" must be removed from the central register and local index "no later than 5 years after the case is closed" unless there is a subsequent report in which case the information may be maintained "until 5 years after the subsequent case or report is closed."

The Joint Committee objects to Section 431.3 of this proposed rulemaking because the Department did not implement paragraphs 2057.14 and 2058.5 of the Abused and Neglected Child Reporting Act in that Section 431.3 does not explicitly delineate how long confidential indicated child abuse or neglect reports are maintained in the Department's central register and local index.

Date Agency Response Received: November 3, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: December 27, 1982

Effective Date: January 1, 1983

Department of Conservation

Title 17 Illinois Administrative Code Part 830 Commercial Fishing in
Certain Waters of the State
[Emergency]

Initial Publication in Illinois Register: May 28, 1982

Joint Committee Objection: July 14, 1982

Specific Objection:

Sections 830.60 and 830.70 list the species of fish which may be taken and the size limit regulations for fishing. The Department proposed certain amendments to the rule implementing Section 3.25 of the Illinois Fish Code which prohibits any person to take mussels "by means of basket dredges, self-contained or other air diving devices, mechanical or suction devices."

The Joint Committee objects to these sections of the emergency rulemaking because they violate Section 230.400(c) of the Joint Committee's Operational Rules by containing provisions not

necessitated by the situation construed by the Department to constitute an emergency, as defined in Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02).

Date Agency Response Received: August 6, 1982

Nature of Agency Response: Withdrawal of Objectionable Section(s)

Publication as Adopted in the Illinois Register: May 28, 1982

Effective Date: May 18, 1982

Department of Human Rights

Promulgation of Rules Governing "Equal Employment Opportunity and Affirmative Action by State Executive Agencies"

Initial Publication in Illinois Register: January 4, 1982

Date Second Notice Received: May 14, 1982

Joint Committee Objection: June 8, 1982

Specific Objections:

The Joint Committee objected to Section 12.8(e) of this rule because the Department has exceeded its statutory authority and thus, is not in compliance with Section 7.04.3 of the Illinois Administrative Procedure Act.

The Joint Committee objects to this proposed rulemaking because Section 2-105(B)(4) of the Human Rights Act clearly mandates the Department of Human Rights to approve the EEO officer appointed by each state executive department, board, commission, and instrumentality with 1000 or more employees. The Director of the Department of Human Rights has no statutory authority to prepare an annual performance evaluation and subsequent recommendation regarding his/her employment for an EEO officer in any agency.

The Department has exceeded its statutory authority by requiring the Director of the Department of Human Rights to complete an annual performance evaluation and subsequent recommendation regarding his/her employment for an EEO officer in any agency.

Date Agency Response Received: June 21, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: July 9, 1982

Effective Date: July 1, 1982

Promulgation of "Interpretive Rules on Handicap Discrimination in Employment"

Initial Publication in Illinois Register: March 12, 1982

Date Second Notice Received: May 27, 1982

Joint Committee Objection: July 14, 1982

Specific Objections:

1. Section 4.03 of the Illinois Administrative Procedure Act requires as of January 1, 1982 that an agency employ certain methods to reduce the impact of rulemaking on small businesses when those methods are "...legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking." Since this rulemaking has an economic impact on small businesses and the Department and Commission did not notify the Department of Commerce and Community Affairs, the Department and Commission are not in compliance with Section 4.03(c) of the Illinois Administrative Procedure Act.

The Joint Committee objects to the Department of Human Rights' and Human Rights Commission's Promulgation of "Interpretive Rules on Handicap Discrimination in Employment" because the Department and Commission did not comply with Section 4.03(c) of the Illinois Administrative Procedure Act which requires that "the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses."

2. The Department and Commission have taken the definition of handicap as provided in the Human Rights Act at Section 1-103(1) and narrowed its meaning. The statutory requirement is that a handicap may not be considered if the person is able "to perform the duties of a particular job or position." (Emphasis added.) This proviso seems to include all duties of a particular job or position. However, the Department and Commission have created a category of duties that are "apart from or only incidental to the job in question."

The Joint Committee objects to Section 2(d) of the Department of Human Rights' and Human Rights Commission's Promulgation of "Interpretive Rules on Handicap Discrimination in

Employment" because the Department and Commission have exceeded their statutory authority by narrowing the definition of "handicap" as found in the Illinois Human Rights Act.

Date Agency Response Received: September 10, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: September 24, 1982

Effective Date: September 15, 1982

Department of Insurance

Rule 8 1/2.01 (Insurance Holding Company Systems) [Emergency]

Initial Publication in Illinois Register: March 19, 1982

Joint Committee Objection: April 13, 1982

Specific Objection:

Pursuant to Section 131.8 and 131.12a of the Insurance Code implemented by P.A. 82-595, this emergency amendment to Rule 8 1/2.01 requires pre-acquisition notification to the Director if certain market shares, set forth in the statute, are involved in a proposed acquisition of a domestic insurance company. This emergency amendment establishes the format for the required notification by adding Form CX to the Rule with respect to market shares by line of insurance.

The Joint Committee objects to this emergency rulemaking because it violated the Section 5.02 prohibition against filing two emergency rules with substantially the same purpose and effect within 24 months, in that the Department incorporated provisions into this emergency rule from an expired emergency amendment to Rule 8 1/2.01, which was published within the previous 24 months.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: March 19, 1982

Effective Date: March 5, 1982

Department of Labor

Rule 56 Ill. Adm. Code 400.800 to 400.812 Federal Supplemental
Compensation Act of 1982
[Peremptory]

Initial Publication in Illinois Register: November 5, 1982

Joint Committee Objection: December 16, 1982

Specific Objection:

This peremptory rulemaking implements the Federal Supplemental Compensation Act of 1982 (Public Law 97-248) which took effect on September 12, 1982 and will run until March 31, 1983.

The Joint Committee objects to this peremptory rulemaking because it constitutes an improper use of the peremptory rulemaking process under Section 5.03 of the Administrative Procedure Act, Ill. Rev. Stat. 1981, ch. 127, par. 1005.03 because: (1) this rulemaking was not required by federal law; (2) the Department had some discretion as to the content of this rulemaking; and (3) notice of this rulemaking was not filed within 30 days of the effective date of the federal legislation.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 5, 1982

Effective Date: September 19, 1982

Department of Mental Health and Developmental Disabilities

Part 113 Minimum Standards for Licensure of Community Residential
Alternatives
[Emergency]

Initial Publication in Illinois Register: June 18, 1982

Joint Committee Objection: July 14, 1982

Specific Objection:

This emergency rulemaking, effective June 8, 1982, is in response to Public Act 82-584 which was signed into law September 24, 1981 with an effective date of January 1, 1982. The Public Act provided that the Department of Mental Health and Developmental Disabilities license, regulate, and monitor community residential alternatives (CRA's) for developmentally disabled persons. Since Public Act 82-584 was signed September 24, 1981, and became effective January 1, 1982, the Department had an adequate period of time to promulgate the rules by general rulemaking procedures.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the Illinois Administrative Procedure Act in that adequate time existed for the Department to utilize the rulemaking procedures of Section 5.01 of the Act and that no true emergency exists.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: June 18, 1982

Effective Date: June 8, 1982

Part 103, Grants

Initial Publication in Illinois Register: July 30, 1982

Date Second Notice Received: November 9, 1982

Joint Committee Objection: December 16, 1982

Specific Objection:

Section 103.10d)4)C), 103.60a)3), 103.65h)2) and 103.160c)5)A).

The Joint Committee objects to Sections 103.10d)4)C), 103.60a)3), 103.65h)2) and 103.160c)5)A) because these sections reference the Department's Recipient Discharge/Linkage/Aftercare Manual which is not on file with the Secretary of State as a rule.

The Department's Recipient Discharge/Linkage/Aftercare Manual contains the Department's policies and procedures for adequate discharge planning, linkage and follow-up aftercare of recipients being discharged from State-operated facilities.

The Joint Committee determined that the Recipient Discharge/Linkage/Aftercare Manual does fall within the definition of a "rule" contained in Section 3.09 of the Illinois Administrative Procedure Act (Illinois Revised Statutes, ch. 127, par. 1003.09) and therefore objected to Sections 103.10d)4)C), 103.60a)3), 103.65h)2)and 103.160c)5)A) of the Department of Mental Health and Developmental Disabilities' proposed Rule, Part 103, Grants, because those sections incorporate by reference that manual.

Date Agency Response Received: January 24, 1983

Nature of Agency Response: Modified to Meet the Joint Committee's Objections

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Part 103, Grants
[Emergency]

Initial Publication in Illinois Register: July 30, 1982

Joint Committee Objection: October 13, 1982

Specific Objections:

1. Rule 103, Grants. This emergency rulemaking discusses the Department's policies for awarding grants for community-based programs, including eligibility, target areas, monitoring and evaluation, reporting requirements and application procedures.

The Joint Committee objects to this emergency rulemaking because it represents an improper exercise of emergency rulemaking authority as contained in Section 5.02 of the IAPA (Ill. Rev. Stat. 1981, ch. 127, par. 1005.02).

The Department exercised this emergency rulemaking following a Court Order concerning Ill. Assoc. of Community Mental Health Associations of Rehabilitation Facilities v. Ivan Pavkovic which enjoined the Department from requiring plaintiff's member agencies to adopt the uniform cost reporting system until the Department promulgated a rule in accordance with the IAPA requiring the utilization of the uniform cost reporting system.

Section 5.02 of the IAPA (Ill. Rev. Stat. 1981, ch. 127, par. 1005.02) reserves the use of emergency rulemaking for situations which threaten the public interest, safety or welfare. Although, this court order threatened the agency's interest, safety, and welfare, the use of emergency rulemaking was not warranted, and, furthermore, had the Department originally complied with the Administrative Procedure Act, no Court Order would have resulted.

2. Subpart A, which describes sample grant programs, target populations, grant application procedures, and methodology for monitoring and evaluation.

The Joint Committee objects to this Subpart of the emergency rulemaking because it violates Section 230.400(c) of the Joint Committee's Operational Rules by containing provisions not necessitated by the situation construed by the Department to constitute an emergency, as defined in Section 5.02 of the IAPA (Ill. Rev. Stat. 1981, ch. 127, par. 1005.02).

The Court Order which precipitated this emergency rulemaking required the Department to adopt the uniform cost reporting system in accordance with the IAPA. Those reporting guidelines are found in Subpart B. Subpart A, however, contains numerous provisions separate from the uniform cost reporting system and therefore should not have been adopted as part of this emergency rulemaking.

3. Section 103.220 which allows the Department to grant deviations from policies set forth throughout the rule concerning grants for community based programs, including eligibility, target areas, monitoring and evaluation, reporting requirements and applications.

Section 103.220 fails to include the conditions that must exist before an exception or deviation will be granted. This failure defies Section 4.02 of the IAPA (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) which requires that rules exercising discretionary powers include the standards by which the agency shall exercise the power.

Date Agency Response Received: None

Nature of Agency Response: Refusal

Publication as Adopted in the Illinois Register: July 30, 1982

Effective Date: July 21, 1982

Department of Public Aid

Rule 4.13.5, Hospital Cost Reporting Requirements

Initial Publication in Illinois Register: December 4, 1981

Date Second Notice Received: October 20, 1982

Joint Committee Objection: November 17, 1982

Specific Objection:

42 CFR 447.250 requires that the Department make payment to Medicaid hospitals by using rates which are "...reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities...." By disallowing the one class of legal fees, the Department will not get an "adequate" measure of the reasonable costs incurred by those hospitals.

The Joint Committee objected to the Department of Public Aid Rule 4.13.5 (Sec. 107.171) because the Department did not provide an adequate justification and rationale for disallowing costs attributed to legal fees incurred as a result of lawsuits against the State thereby violating Section 220.900b) of the Joint Committee on Administrative Rules' Operational Rules.

Date Agency Response Received: December 21, 1982

Nature of Agency Response: Withdrawal of Proposed Rulemaking

Department of Public Health

Addition of Amendments and New Rules to Existing Rules Entitled,
"Certification and Operation of Environmental Laboratories"

Initial Publication in Illinois Register: May 1, 1981

Date Second Notice Received: November 24, 1981

Joint Committee Objection: December 16, 1981

Specific Objection(s):

1. Rules 204, 205, 206, 209, 242, 243, 244, 245, 246, 247, 282, 284, 286, 301, 304 and 307 incorporate by reference certain professional association guidelines pertaining to laboratory methodology.

The Joint Committee objected to Rules 204, 205, 206, 209, 242, 243, 244, 245, 246, 247, 282, 284, 286, 301, 304 and 307 because they violate Section 6.01 of the Illinois Administrative Procedure Act by incorporating by reference certain professional association guidelines pertaining to laboratory methodology without filing a copy of these documents with the Secretary of State as required by Section 6.01.

2. This rulemaking details minimum requirements governing laboratory personnel, physical facilities, equipment and methodologies which an Environmental Laboratory must meet to be certified.

The Joint Committee objected to this rulemaking because the Department of Public Health and the Environmental Protection Agency failed to submit a proper analysis of the direct economic effect on the industries regulated by the proposed rules and did not provide anticipated effects on the proposing Agencies' budgets. Failure to submit an adequate economic analysis violates Section 7.04 of the Administrative Procedure Act, ch. 127, para. 1007.4, Ill. Rev. Stat.

3. Proposed Rule 102 expands the definition of Environmental Laboratories to include facilities that perform analyses on samples in order to determine the quality of wastewater.

The Joint Committee objected to the proposed definition of Environmental Laboratories because requiring wastewater laboratories to meet the detailed facility, equipment and employee requirements in this rulemaking, without demonstrating sufficient need for such requirements and without an adequate study of the economic effect on industry, represents an arbitrary and capricious exercise of the Agencies' rulemaking authority and therefore an invalid extension of their statutory authority.

Date Agency Response Received: March 19, 1982

Nature of Agency Response: Failed to Modify to Meet the Joint Committee's Objection

Joint Committee Discussion of Agency Response: April 13, 1982

Action Taken by Joint Committee: Voted to Prohibit Filing

Reasons for the Prohibition:

1. The Agencies have violated Section 7.04 of the Administrative Procedure Act, Ill. Rev. Stat., ch. 127, par. 1007.4, by failing to submit an adequate economic analysis and that this poses a serious threat to the public welfare of the citizens of Illinois by failing to take into account the significant costs to be imposed by this rulemaking and,

2. Requiring wastewater laboratories to meet the detailed personnel, physical facility, equipment and methodology requirements in this rulemaking without demonstrating sufficient need for such requirements and without an adequate study of the economic effect on industry, represents an arbitrary and capricious exercise of the Agencies' rulemaking authority and therefore an invalid extension of their statutory authority and this represents a serious threat to the public welfare of the citizens by imposing tremendous financial costs.

Agency Response to Filing Prohibition Received: May 3, 1982

Nature of Agency Response: Withdrawal of Proposed Rulemaking

Hospital Licensing Act and Requirements

Initial Publication in Illinois Register: October 31, 1981

Date Second Notice Received: December 11, 1981

Joint Committee Objection: January 20, 1982

Specific Objection:

1. Section 1-2.5 of this proposed rulemaking. The amendment proposed in this section expedites the annual license renewal process for hospitals.

The Joint Committee objects to this proposed amendment because this proposed section lacks adequate standards and criteria as required by Section 4.02 of the Illinois Administrative Procedure Act. The language of Public Health's proposed amendment indicates that once a hospital initially fulfills licensing requirements, that institution will automatically receive an annual renewal. Furthermore, this language implies that no effort to maintain a minimum level of health and safety standards is necessary.

Date Agency Response Received: February 23, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: March 26, 1982

Effective Date: March 15, 1982

State Administration of Maternal and Child Health Projects

Initial Publication in Illinois Register: January 4, 1982

Date Second Notice Received: March 3, 1982

Joint Committee Objection: March 23, 1982

Specific Objection(s):

1. Proposed Section 630.100 requires local health agencies, receiving grants, to file quarterly performance reports, annual reports, and a final performance report at the conclusion of the project.

The Joint Committee objects to proposed Section 630.100 because it requires local agencies to file an excessive number of repetitive reports at substantial expense to the local agencies, without any specific basis for such a requirement. Furthermore, this proposed rulemaking fails to sufficiently clarify what is to be required in these reports.

2. Proposed Section 630.200g) requires local agencies to obtain written approval from the Department prior to making any budget revisions, including transfers between budget line items.

The Joint Committee objects to proposed Section 630.200g) because the Department has a policy of giving preliminary approval to these budget transfers over the telephone, and such policy should be included in this rulemaking as required by Sections 3.09 and 4 of the Illinois Administrative Procedure Act. Therefore, the rule fails to accurately include agency policy.

Date Agency Response Received: April 2, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: April 30, 1982

Effective Date: April 20, 1982

Hospital Licensing Act and Requirements, Amendments to Rule 1-3.2

Initial Publication in Illinois Register: March 5, 1982

Date Second Notice Received: November 30, 1982

Joint Committee Objection: December 16, 1982

Specific Objection:

Proposed Section 1-3.2(d)(4) grants the director of the Department of Public Health the discretionary authority to terminate research programs and/or experimental procedures.

The Joint Committee objects to proposed Section 1-3.2(d)(4) because it violates Section 4.02 of the Administrative Procedure Act, Ill. Rev. Stat. 1981, ch. 127, par. 1004.02, by granting the director of the Department of Public Health a discretionary power without including the standards by which the director shall exercise that power.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Minimum Standards, Rules and Regulations for the Licensure of Long-Term Care Facilities for Persons Under Twenty-Two Years of Age

Initial Publication in Illinois Register: March 19, 1982

Date Second Notice Received: June 3, 1982

Joint Committee Objection: July 14, 1982

Specific Objection:

Proposed Section 63.08.03.12 requires that nurse aide training courses offer a minimum of 120 hours of training.

The Joint Committee objects to Proposed Section 63.08.03.12 because it is inconsistent with the intent of Public Act 82-184 (HB 0580) which amended Section 3-206 of "Nursing Home Care Reform Act of 1979," and was intended to prevent the Department of Public Health from setting a specific minimum hourly requirement for nurse aide training courses.

Date Agency Response Received: August 16, 1982

Nature of Agency Response: Withdrawal of Proposed Rulemaking

Minimum Standards, Rules and Regulations for Classification and Licensure of Skilled Nursing Facilities and Intermediate Care Facilities

Initial Publication in Illinois Register: March 19, 1982

Date Second Notice Received: June 3, 1982

Joint Committee Objection: July 14, 1982

Specific Objection:

Proposed Section 03.06.03.12 requires that nurse aide training courses offer a minimum of 120 hours of training.

The Joint Committee objects to Proposed Section 03.06.03.12 because it is inconsistent with the intent of Public Act 82-184 (HB 0580) which amended Section 3-206 of "Nursing Home Care Reform Act of 1979," and was intended to prevent the Department of Public Health from setting a specific minimum hourly requirement for nurse aide training courses.

Date Agency Response Received: August 16, 1982

Nature of Agency Response: Withdrawal of Proposed Rulemaking

Repeal, Rules and Regulations Pursuant to the Lead Poisoning Prevention Act; Prevention of Lead Poisoning; Proposed Rules 77 Ill. Adm. Code 845

Initial Publication in Illinois Register: September 3, 1982

Date Second Notice Received: October 25, 1982

Joint Committee Objection: November 17, 1982

Specific Objection:

Proposed Section 845.30(f) authorizes the Department to extend the period for removing lead hazards beyond the period originally established in writing.

The Joint Committee objects to proposed Section 845.30(f) because it violates Section 9(4) of the Lead Poisoning Prevention Act, Ill. Rev. Stat. 1981, ch. 111½, par. 1309(4), by authorizing the Department to extend the period for removing lead hazards beyond the 30 day limit provided in the Act.

Date Agency Response Received: November 19, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 3, 1982

Effective Date: November 24, 1982

Department of Registration and Education

Section 150.85 of Part 150: Architecture Act; Section 170.130 of Part 170: Barber Law; Section 180.95 of Part 180: Beauty Culture Act; Etc. [Emergency]

Initial Publication in Illinois Register: January 25, 1982

Joint Committee Objection: March 23, 1982

Specific Objection:

This emergency rule, effective January 6, 1982, is in response to Public Act 82-149 (S.B. 1034) which was signed into law August 12, 1981 with an effective date of January 1, 1982. The Public Act took specific licensure expiration dates and renewal periods out of the licensing Acts and provided that they be set by rule of the Department. This emergency rule was published in the January 22, 1982 issue of the Illinois Register.

Since Public Act 82-149 was signed August 12, 1981, and became effective January 1, 1982, the Department had an adequate period of time to amend the applicable rules by general rulemaking procedures. In addition, this rulemaking did not alter any licensure expiration dates or renewal periods; it merely restated the licensure expiration dates and renewal periods that had existed in the statutes prior to enactment of P.A. 82-149. Thus, it appears as though an actual emergency situation, as defined in Section 5.02 of the Illinois Administrative Procedure Act, did not exist.

Emergency rulemaking as defined by the Administrative Procedure Act is "the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The Act further requires the agency to make a finding that such an emergency exists which requires the adoption of the rule immediately rather than following the procedures set forth in Section 5.01. In this situation the Department has not adequately explained why an emergency rule is necessary or what emergency situation exists. Because the rules retain the exact dates that were contained in the prior statutes, the reason for emergency in

the published notice does not constitute an adequate or reasonable finding as required by the Act.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the Illinois Administrative Procedure Act in that adequate time existed for the Department to utilize the rulemaking procedures of Section 5.01 of the Act and that no true emergency exists.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: January 25, 1982

Effective Date: January 6, 1982

Section(s) 320.40 of Part 320: Optometric Practice Act of Title 68 of the
Illinois Administrative Code
[Emergency]

Initial Publication in Illinois Register: February 16, 1982

Joint Committee Objection: March 23, 1982

Specific Objection:

This emergency rulemaking, effective January 29, 1982, was promulgated because the Department conducted a special licensing examination in February, 1982. This emergency rulemaking was published in the February 16, 1982 issue of the Illinois Register. The Department stated that this special licensing examination was necessary because of certain recently discovered inconsistencies in the notification of recent changes in the rules relating to the examination process. The examination was offered to ensure a fair and equitable opportunity for licensure to all persons who took the state-constructed licensure examination in June of 1981.

On June 1, 1981, the Department adopted new rules which changed the licensure examination requirement. Previously, applicants were required to successfully pass a state-constructed licensure examination, which was prepared by the Optometry Examining and Disciplinary Committee. The new rules adopted on June 1, 1981, require successful completion of the examination given by the National Board of Examiners in Optometry (NBEO). The Department will require proof of successful completion of the NBEO examination by NBEO standards prior to permitting an applicant to sit for the practical examination.

Since the examination in question was held in June of 1981, since the Department knew in September, 1981, that there was a question regarding the validity of the examination, and since the Department offered the retake examination in February, 1982, the Department had an adequate period of time to amend the applicable rules by general rulemaking procedures.

In addition, because this rulemaking was not published in the Illinois Register until February 16, 1982, and the retake exam was given in February, 1982, it appears as though the standards for the February 1982 retake exam may not have been available before the examination date. Thus, this may create additional problems for the Department once the grades are reported for this February, 1982 retake exam, similar to the same problems encountered after the original June, 1981 exam.

Emergency rulemaking as defined by the Administrative Procedure Act is "the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The Act further requires the agency to make a finding that such an emergency exists which requires the adoption of the rule immediately rather than following the procedures set forth in Section 5.01. In this situation, the Department has not adequately explained why an emergency rule is necessary or what emergency situation exists. Because the Department has had adequate time to respond to the confusion engendered by the exam offered in June, 1981, the reason for emergency offered in the published notice does not constitute an adequate or reasonable finding as required by the Act.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the IAPA in that adequate time existed for the Department to utilize the general rulemaking procedures of Section 5.01 of the Act; thus, the Department created an emergency situation and no true emergency exists as defined by the IAPA.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: February 16, 1982

Effective Date: January 29, 1982

Section(s) 450.120 of Part 450: Real Estate Broker and Salesmen
Licensing Act of Title 68 of the Illinois Administrative Code
[Emergency]

Initial Publication in Illinois Register: February 19, 1982

Joint Committee Objection: March 23, 1982

Specific Objection:

Previous Department policy provided for the right to automatic oral arguments prior to a license termination for payment out of the Real Estate Recovery Fund, pursuant to Section 8.3 of the licensing Act.

Section 8.3 of "The Real Estate Brokers & Salesmen License Act" provides in part (d):

...the license of the broker or salesman shall be automatically terminated upon the issuance of a court order authorizing payment from the Real Estate Recovery Fund. (Emphasis added.)

By providing automatic oral arguments prior to a license termination due to a court-ordered payment from the Real Estate Recovery Fund, the Department was not in compliance with Section 8.3(d) of this Act.

The Department clearly stated that automatic oral arguments were a matter of Department policy. It appears as though this policy meets the definition of a rule. Section 3.09 of the IAPA defines a rule in pertinent part:

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy....

Thus, because this Department policy was not included in the Department's rules, the Department was not in compliance with Section 3.09 of the IAPA and an emergency situation occurred.

It appears as though the Department has created a threat to the public safety by not implementing the statutory safeguard provided in Section 8.3(d) of The Real Estate Brokers and Salesmen License Act. Thus, it appears as though an actual emergency situation, as defined in Section 5.02 of the IAPA, did not exist.

Emergency rulemaking as defined by the Administrative Procedure Act is "the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The Act further requires the agency to make a finding that such an emergency exists which requires the adoption of the rule immediately rather than

following the procedures set forth in Section 5.01. In this situation the Department has not adequately explained why an emergency rule is necessary or what emergency situation exists. Because the Department was not in compliance with Section 8.3(d) of "The Real Estate Brokers & Salesmen License Act" and Section 3.09 of the IAPA, the reason for emergency in the published notice does not constitute an adequate or reasonable finding as required by the Act.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the IAPA in that the Department created an emergency situation by non-compliance with Section 8.3(d) of the Real Estate Brokers and Salesmen License Act and having Departmental policy which appears to be within the definition of rule as defined by Section 3.09 of the IAPA not included in the Department's rules. Thus, no true emergency as defined by the IAPA exists.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: February 19, 1982

Effective Date: February 3, 1982

Rules 3 and 7 of the Rules for the Administration of the Controlled
Substances Act
[Emergency]

Initial Publication in Illinois Register: March 19, 1982

Joint Committee Objection: April 13, 1982

Specific Objection:

This emergency rule, effective March 8, 1982, is in response to Public Act 82-149 (S.B. 1034) which was signed into law August 12, 1981 with an effective date of January 1, 1982. The Public Act took specific licensure expiration dates and renewal periods out of the licensing Acts and provided that they be set by rule of the Department. This emergency rule was published in the March 19, 1982 issue of the Illinois Register.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the IAPA in that adequate time existed for the Department to utilize the general rulemaking procedures of Section 5.01 of

the Act; thus, the Department created an emergency situation and no true emergency existed as defined by the Illinois Administrative Procedure Act.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: March 19, 1982

Effective Date: March 8, 1982

Department of Revenue

Rule No. 1, Section C of the Bingo License and Tax Act Rules [Emergency]

Initial Publication in Illinois Register: July 23, 1982

Joint Committee Objection: September 17, 1982

Specific Objection:

This emergency rulemaking allowed continuous bingo games at the Illinois State Fair and exempted those games from the former rule of a minimum of two hours between games.

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the Illinois Administrative Procedure Act in that no emergency existed because the absence of these rules would have caused no threat to the public interest, safety or welfare.

Date Agency Response Received: December 15, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 23, 1982

Effective Date: July 23, 1982

Constitutional Offices

Office of the Secretary of State

Office of the Secretary of State, Department of Personnel Rules

Initial Publication in Illinois Register: October 16, 1981

Date Second Notice Received: December 10, 1981

Joint Committee Objection: January 20, 1982

Specific Objection(s):

1. Section 1-20 states, in pertinent part:

At the request of a department, or at the discretion of the Director of Personnel, a survey, audit or such other investigation as may be deemed necessary by the Department to determine the proper allocation of any position to a class. Upon written request of an employee, such investigation as may be deemed necessary by the Director of Personnel shall be made to determine the proper allocation of the employee's position.

The Joint Committee objected to Section 1-20 as in violation of Section 4.01 of the Illinois Administrative Procedure Act because it allows the Director of Personnel unlimited discretion by failing to include standards and criteria by which the Director decides to conduct a survey, audit or such other investigation to determine the proper allocation of any position to a class.

2. Section 2-120 provides: "The Director of Personnel may establish linguistic options when he deems such options to be appropriate."

The Joint Committee objected to Section 2-120 as in violation of Section 4.01 of the Illinois Administrative Procedure Act because the rule provides no standards or criteria for the Director of Personnel in his determination of whether linguistic options are "appropriate".

3. Rule 2-70(a) provides that no applicant may retake the qualifying exam until 30 calendar days have elapsed. This provision, however, may "be waived by the Director of Personnel when the best interests of the Office...require such a waiver."

Rule 2-180 states that "[t]he Director of Personnel may restore a name to the same eligible list when such action is in the best interest of the Office of the Secretary of State."

The Joint Committee objected to Section 2-70(a) and 2-180 as in violation of Section 4.01 of the Illinois Administrative Procedure Act because they do not include any standards to define how the Director of Personnel determines whether his action to waive a qualifying examination or restore a name to

the eligible list is "in the best interests of the Office of the Secretary of State."

Date Agency Response Received: February 11, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection(s)

Publication as Adopted in the Illinois Register: March 26, 1982

Effective Date: March 17, 1982

Miscellaneous Agencies

Illinois Commerce Commission

General Order No. 219, 220, 221, 222, 223, 224, and 225 under Section 10(c) of the Illinois Public Utilities Act
[Peremptory]

Initial Publication in Illinois Register: April 9, 1982

Joint Committee Objection: May 11, 1982

Specific Objections:

The entire rulemaking was adopted as a set of peremptory rules while the rulemaking did not meet all the requirements (stated in Ill. Rev. Stat., ch. 127, sec. 1005.03) for the use of peremptory rulemaking. One of the requirements for the use of peremptory rulemaking is that there must be no agency discretion as to the content of the rule.

Adoption of these peremptory rules, without repealing existing inconsistent rules, brings about a situation in which conflicting rules exist concurrently on the same topics.

The Joint Committee objects to this peremptory rulemaking, first, because the Illinois Commerce Commission was not precluded from exercising discretion as to the content of these peremptory rules and, second, because the failure to repeal inconsistent rules creates confusion and possible conflicts.

Date Agency Response Received: May 25, 1982

Nature of Agency Response: Initiate Rulemaking to Repeal the Rules to Meet the Joint Committee's Objection(s)

Publication as Adopted in the Illinois Register: April 9, 1982

Effective Date: March 29, 1982

Industrial Commission of Illinois

Rules Governing Practice Before the Industrial Commission

Initial Publication in Illinois Register: May 7, 1982

Date Second Notice Received: July 7, 1982

Joint Committee Objection: August 17, 1982

Specific Objection:

Proposed Section 2-6(A) and 2-9 of these rules violate Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, sec. 1004.02) by providing for the exercise of discretion without setting forth the standards and criteria by which the discretion is limited.

Date Agency Response Received: August 30, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: September 20, 1982

Effective Date: September 20, 1982

Environmental Protection Agency

Addition of Amendments and New Rules to Existing Rules Entitled,
"Certification and Operation of Environmental Laboratories"

Initial Publication in Illinois Register: May 1, 1981

Date Second Notice Received: November 24, 1981

Joint Committee Objection: December 16, 1981

Specific Objection(s):

1. Rules 204, 205, 206, 209, 242, 243, 244, 245, 246, 247, 282, 284, 286, 301, 304 and 307 incorporate by reference certain professional association guidelines pertaining to laboratory methodology.

The Joint Committee objected to Rules 204, 205, 206, 209, 242, 243, 244, 245, 246, 247, 282, 284, 286, 301, 304 and 307 because they violate Section 6.01 of the Illinois Administrative Procedure Act by incorporating by reference certain professional association guidelines pertaining to laboratory methodology without filing a copy of these documents with the Secretary of State as required by Section 6.01.

2. This rulemaking details minimum requirements governing laboratory personnel, physical facilities, equipment and methodologies which an Environmental Laboratory must meet to be certified.

The Joint Committee objected to this rulemaking because the Department of Public Health and the Environmental Protection Agency failed to submit a proper analysis of the direct economic effect on the industries regulated by the proposed rules and did not provide anticipated effects on the proposing Agencies' budgets. Failure to submit an adequate economic analysis violates Section 7.04 of the Administrative Procedure Act, ch. 127, para. 1007.4, Ill. Rev. Stat.

3. Proposed Rule 102 expands the definition of Environmental Laboratories to include facilities that perform analyses on samples in order to determine the quality of wastewater.

The Joint Committee objected to the proposed definition of Environmental Laboratories because requiring wastewater laboratories to meet the detailed facility, equipment and employee requirements in this rulemaking, without demonstrating sufficient need for such requirements and without an adequate study of the economic effect on industry, represents an arbitrary and capricious exercise of the Agencies' rulemaking authority and therefore an invalid extension of their statutory authority.

Date Agency Response Received: March 19, 1982

Nature of Agency Response: Failed to Modify to Meet the Joint Committee's Objection

Joint Committee Discussion of Agency Response: April 13, 1982

Action Taken by Joint Committee: Voted to Prohibit Filing

Reasons for the Prohibition:

1. The Agencies have violated Section 7.04 of the Administrative Procedure Act, Ill. Rev. Stat., ch. 127, par. 1007.4, by failing to submit an adequate economic analysis and that this poses a serious threat to the public welfare of the citizens of Illinois by failing to take into account the significant costs to be imposed by this rulemaking and,

2. Requiring wastewater laboratories to meet the detailed personnel, physical facility, equipment and methodology requirements in this rulemaking without demonstrating sufficient need for such requirements and without an adequate study of the economic effect on industry, represents an arbitrary and capricious exercise of the Agencies' rulemaking authority and therefore an invalid extension of their statutory authority and this represents a serious threat to the public welfare of the citizens by imposing tremendous financial costs.

Agency Response to Filing Prohibition Received: May 3, 1982

Nature of Agency Response: Withdrawal of Proposed Rulemaking

Human Rights Commission

Promulgation of "Interpretive Rules on Handicap Discrimination in Employment"

Initial Publication in Illinois Register: March 12, 1982

Date Second Notice Received: May 27, 1982

Joint Committee Objection: July 14, 1982

Specific Objections:

1. Section 4.03 of the Illinois Administrative Procedure Act requires as of January 1, 1982 that an agency employ certain methods to reduce the impact of rulemaking on small businesses when those methods are "...legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking." Since this rulemaking has an economic impact on small businesses and the Department and Commission did not notify the Department of Commerce and Community Affairs, the Department and Commission are not in compliance with Section 4.03(c) of the Illinois Administrative Procedure Act.

The Joint Committee objects to the Department of Human Rights' and Human Rights Commission's Promulgation of "Interpretive Rules on Handicap Discrimination in Employment" because the Department and Commission did not comply with Section 4.03(c) of the Illinois Administrative Procedure Act which requires that "the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses."

2. The Department and Commission have taken the definition of handicap as provided in the Human Rights Act at Section 1-103(I) and narrowed its meaning. The statutory requirement

is that a handicap may not be considered if the person is able "to perform the duties of a particular job or position." (Emphasis added.) This proviso seems to include all duties of a particular job or position. However, the Department and Commission have created a category of duties that are "apart from or only incidental to the job in question."

The Joint Committee objects to Section 2(d) of the Department of Human Rights' and Human Rights Commission's Promulgation of "Interpretive Rules on Handicap Discrimination in Employment" because the Department and Commission have exceeded their statutory authority by narrowing the definition of "handicap" as found in the Illinois Human Rights Act.

Date Agency Response Received: September 10, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: September 24, 1982

Effective Date: September 15, 1982

Illinois Nature Preserves Commission

Internal Rules of Order and Procedure of the Illinois Nature Preserves Commission
[Peremptory Internal]

Initial Publication in Illinois Register: June 26, 1982

Joint Committee Objection: July 14, 1982

Specific Objection:

1. Internal Rule Section 10 and 11 provide for the approval of nature preserve dedications and holding of public hearings.

The Joint Committee objects to these internal rules because these rules are not proper internal rules under Section 4.01 of the Illinois Administrative Procedure Act, ch. 127, para. 1004.01 (1979 Ill. Rev. Stat.) and should have been promulgated under Section 5.01 of the Act.

2. Internal Rule Sections 10, 11, and 12 provide for the approval of nature preserve dedications; holding of public hearings; and amendment or suspension of rules.

The Joint Committee objects to these rules on the basis that these sections should have been promulgated jointly with the Department of Conservation as required by Section 6.08 of the

Illinois Natural Areas Preservation Act, ch. 105, para. 706.08 (1979 Ill. Rev. Stat.).

3. Internal Rule Section 12 provides that these internal rules may be amended by a vote of 5 members of the Commission and that Sections 1-10 may be waived or suspended by the Commission.

The Joint Committee objects to this Section because it allows for circumvention of Section 5.01 of the Illinois Administrative Procedure Act, ch. 127, para. 1005.01, (1979 Ill. Rev. Stat.).

Date Agency Response Received: December 22, 1982

Nature of Agency Response: Withdrawal to Remedy Objection and Refusal to Modify to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: June 26, 1982

Effective Date: June 15, 1982

Illinois Farm Development Authority

Rules for the Illinois Farm Development Authority (Articles I through XVIII)

Initial Publication in Illinois Register: July 30, 1982

Date Second Notice Received: October 27, 1982

Joint Committee Objection: November 17, 1982

Specific Objection:

Proposed Article XIII contains the guidelines applicable to all of the Illinois Farm Development Authority's Programs.

The Joint Committee objects to proposed Article XIII because, by not using the regulations of the Farmers' Home Administration as criteria for approving loans, it is inconsistent with the legislative intent of the Illinois Farm Development Act, Ill. Rev. Stat. 1981, ch. 5, par. 1201 et seq. (Public Act 82-518).

Date Agency Response Received: December 17, 1982

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: January 3, 1983

Effective Date: December 22, 1982

Office of the State Fire Marshal

Policy and Procedures Manual for Fire Protection Personnel; 41 Ill. Adm. Code 140.190, 140.200 & 140.210
[Emergency]

Initial Publication in Illinois Register: June 25, 1982

Joint Committee Objection: August 17, 1982

Specific Objection:

The Joint Committee objects to this emergency rulemaking because it does not meet the standards of Section 5.02 of the Illinois Administrative Procedure Act in that adequate time existed for the Office of the State Fire Marshal to utilize the rulemaking procedures of Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1005.02).

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: June 25, 1982

Effective Date: June 16, 1982

Office of the Savings and Loan Commissioner

Amendment of Article V of the Rules and Regulations of the Office of the Savings and Loan Commissioner

Initial Publication in Illinois Register: November 13, 1981

Date Second Notice Received: March 1, 1982

Joint Committee Objection: March 23, 1982

Specific Objection:

Proposed Section 1 delineates standards by which an appraisal or reappraisal of real property is required to be made for use by state-chartered savings and loan associations.

The Joint Committee objects to proposed Section 1 because it establishes qualifications for non-independent (in-house) appraisers which exceeds the statutory authority granted to the Commissioner pursuant to Ill. Rev. Stat., ch. 32, par. 800, and Ill. Rev. Stat., ch. 32, par. 841.2(b)(2).

An additional reason the Committee objects to proposed Section 1 is that it was unclear in the first notice that certain provisions in this section would apply to non-independent appraisers, thus denying the public a meaningful comment period on this section in violation of Section 5.01 of the Illinois Administrative Procedure Act.

Date Agency Response Received: April 22, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: June 11, 1982

Effective Date: June 1, 1982

State Board of Elections

Regulation 7-1, Failure to Nominate Candidate [Emergency]

Initial Publication in Illinois Register: March 12, 1982

Joint Committee Objection: April 13, 1982

Specific Objection:

This emergency amendment to Regulation 7-1 excepts judicial candidates from the statutory provisions that permit established political parties to fill vacancies in nomination, in time for the March 16, 1982 primary elections. This rule was published to clarify Section 7-61 of the Election Code and to comply with Article VI, Section 12(a) of the Illinois Constitution, as interpreted by Attorney General Opinion S-454 (May 11, 1972) and the decision in Thurston v. State Board of Elections (76 Ill.2d 385, 392 N.E.2d 1349 (1979)).

The Joint Committee objects to this emergency rulemaking because the sole reason for the emergency was the Board's failure to promulgate this rulemaking in a reasonably expeditious manner, which does not meet the definition of an emergency situation contained in Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02) and that adequate time existed for the State

Board of Elections to utilize the general rulemaking procedures.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: March 12, 1982

Effective Date: February 26, 1982

Regulation 8-2, Rules for Initiation and Submission of Petitions on
Advisory Questions of Public Policy and Proposed Constitutional
Amendments
[Emergency]

Initial Publication in Illinois Register: March 26, 1982

Joint Committee Objection: April 13, 1982

Specific Objection:

This emergency rulemaking, entitled Regulation 8-2, provides for the orderly verification of signatures on petitions submitted with regard to proposed constitutional amendments and statewide questions of public policy by means of a random sampling technique.

The Joint Committee objects to this emergency rulemaking because the reason for the emergency was the Board's failure to promulgate this rulemaking in a reasonably expeditious manner, which does not meet the definition of an emergency situation contained in Section 5.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02) and that adequate time existed for the State Board of Elections to utilize the general rulemaking procedures.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: March 26, 1982

Effective Date: March 17, 1982

Part 9, General rules and regulations under the Campaign Financing Act,
Section 1.05, Filing

Initial Publication in Illinois Register: May 21, 1982

Date Second Notice Received: August 3, 1982

Joint Committee Objection: September 17, 1982

Specific Objection:

This proposed rulemaking defines what constitutes a proper filing under the Illinois Campaign Financing Act by using the standard of apparent conformity with the requirements of the Act including the signature of the person making the filing, completion of all sections and attachment of appropriate schedules.

The Joint Committee objects to Section 1.05 because the Board has exceeded the statutory authority granted in the Illinois Campaign Financing Act by defining what constitutes a filing in such a manner that no latitude is allowed for inadvertent error. Pursuant to Ill. Rev. Stat. 1981, ch. 46, paragraph 9-26, only "willful filing of...incomplete information" constitutes a Class B misdemeanor. The Board's definition does not provide for the distinction between a willful act and an unintentional act thereby violating the legislative intent of the Act.

Date Agency Response Received: December 19, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: January 3, 1983

Effective Date: December 16, 1982

Part 10, Practices and Procedures of the State Board of Elections,
Subpart 402, Order of the Board, Civil Penalties

Initial Publication in Illinois Register: May 21, 1982

Date Second Notice Received: August 3, 1982

Joint Committee Objection: September 17, 1982

Specific Objection:

These rules provide for a uniform set of guidelines for imposition of civil penalties when there is a violation of any provision of the Illinois Campaign Financing Act.

The Joint Committee objects to Part 10, Practices and Procedures of the State Board of Elections, Subpart 402, Order of the Board, Civil Penalties, because the Board has exceeded the statutory authority in Section 9.23 of The Election Code by establishing a "'standing order' which shall remain in effect for a period of three (3) years from the date of the final order, stipulation or agreed order."

Date Agency Response Received: December 19, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: January 3, 1983

Effective Date: December 16, 1982

Part 10, Practices and Procedures of the State Board of Elections, subpart 503, Compliance Conference

Initial Publication in Illinois Register: May 21, 1982

Date Second Notice Received: August 3, 1982

Joint Committee Objection: September 17, 1982

Specific Objection:

These rules provide for a uniform set of guidelines for imposition of civil penalties when there is a violation of any provision of the Illinois Campaign Financing Act.

The Joint Committee objects to Part 10, Practices and Procedures of the State Board of Elections, Subpart 503, Compliance Conference, because the Board has exceeded the statutory authority in Section 9.23 of The Election Code by establishing a "'standing order' which shall remain in effect for a period of three (3) years from the date of the final order, stipulation or agreed order."

Date Agency Response Received: December 19, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: January 3, 1983

Effective Date: December 16, 1982

Illinois State Scholarship Commission

Article III - The Monetary Award Program

Initial Publication in Illinois Register: December 4, 1981

Date Second Notice Received: January 25, 1982

Joint Committee Objection: February 25, 1982

Specific Objection:

The fourth paragraph of proposed Rule 2.75a authorizes the Commission to restrict allowable increases in tuition and mandatory fees, and to establish allowable college budget ceilings, for purposes of calculating awards under the Monetary Award Program.

The Joint Committee objects to the fourth paragraph of proposed Rule 2.75a because it violates Section 4.02 of the Illinois Administrative Procedure Act by creating a discretionary power to be exercised by the Commission without including any standards by which the Commission shall exercise that power.

Date Agency Response Received: March 15, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: March 26, 1982

Effective Date: March 16, 1982

Educational Agencies

Illinois State Scholarship Commission

Article III - The Monetary Award Program

Initial Publication in Illinois Register: December 4, 1981

Date Second Notice Received: January 25, 1982

Joint Committee Objection: February 25, 1982

Specific Objection:

The fourth paragraph of proposed Rule 2.75a authorizes the Commission to restrict allowable increases in tuition and mandatory fees, and to establish allowable college budget ceilings, for purposes of calculating awards under the Monetary Award Program.

The Joint Committee objects to the fourth paragraph of proposed Rule 2.75a because it violates Section 4.02 of the Illinois Administrative Procedure Act by creating a discretionary power to be exercised by the Commission without including any standards by which the Commission shall exercise that power.

Date Agency Response Received: March 15, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection

Publication as Adopted in the Illinois Register: March 26, 1982

Effective Date: March 16, 1982

Article I - The Commission; Article II - Agency Organization and Information; Article V - The State Scholar Program; Article VII - Policemen/Firemen Dependent's Program; Article VIII - Correctional Officer's Survivor Program; and Article IX - Illinois National Guard/Naval Militia Program

Initial Publication in Illinois Register: February 19, 1982

Date Second Notice Received: April 12, 1982

Joint Committee Objection: May 11, 1982

Specific Objection(s):

1. Proposed Rules 1.05, 2.01, 2.17, and 2.32 grant the Commission discretionary authority to determine total resources available to applicants for scholarships and to determine how funds will be distributed if insufficient to meet all applicants' needs.

The Joint Committee objects to proposed Rules 1.05, 2.01, 2.17, and 2.32 because they violate Section 4.02 of the Administrative Procedure Act by creating a discretionary power to be exercised by the Commission without including any standards by which the Commission shall exercise that power.

2. Proposed Rules 2.82, 3.01, and 3.02 grant the Commission the discretionary authority to approve or disapprove an

institution's standards for satisfactory academic progress and disciplinary standards.

The Joint Committee objects to proposed Rules 2.82, 3.01, and 3.02 because they violate Section 4.02 of the Administrative Procedure Act by creating a discretionary power to be exercised by the Commission without including any standards by which the Commission shall exercise that power.

Date Agency Response Received: June 30, 1982

Nature of Agency Response: Modified to Meet the Joint Committee's Objection(s) in Part, Failed to Modify in Part

Publication as Adopted in the Illinois Register: July 16, 1982

Effective Date: June 30, 1982

STATEMENTS OF OBJECTION TO EXISTING RULES

Code Departments

Department of Central Management Services

Rule 5.4(D) of the "Vehicle Rules"

Basis of Review: Five Year/Government Management: State Travel

Joint Committee Objection: August 17, 1982

Specific Objection:

Rule 5.4 of the Vehicle Rules regulates the use of Vehicle Equipment Credit Cards, which are assigned to each state vehicle. Except in emergencies, all costs incurred for the operation of a state vehicle (gasoline, oil, repair, etc.) must be charged to the card assigned to that vehicle.

Rule 5.4(D), however, states that

Vehicle credit cards may not be used without prior DAS authorization for purchases outside DAS facilities in excess of the card limits published annually by DAS.

There are no further explanations of this policy in the Vehicle Rules. Three problems exist in this rule as it is currently written.

The first problem with this rules is that it mentions, but does not actually state, the "card limits published annually by DAS." According to the "Vehicle Operator's Instructions," the current card limits are

\$ 50.00 for cars/trucks under 1 ton
\$200.00 for trucks over 1 ton.

These limits are a statement of general applicability which clearly fits the definition of "rule" in Section 3.09 of the Illinois Administrative Procedure Act. The "Vehicle Operator's Instructions" seem to indicate that all credit card charges for repairs, except in emergencies, must have prior authorization, not just those charges in excess of the card limits and outside Department facilities. Rule 5.4(D) does not accurately reflect the Department's actual policies because the card limits are not published, and may also be inaccurate in its failure to state the requirement for prior approval for all repairs.

The second problem with the rule is that it does not explain the procedures by which such authorizations can be requested and obtained. The Department has told the Joint Committee that authorization for credit card purchases outside Department facilities in excess of the published card limits may be obtained by phoning the "authorization center," which apparently is a 24-hour telephone service. This procedure for requesting such authorizations is also mentioned in the Department's "Vehicle Operator's Instructions." This procedure would appear to implement and apply the Department's policy concerning credit cards, and because it is also generally applicable, fits the definition of "rule" as set for in Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1981, ch. 127, par. 1003.09) and should be included in the rules.

Finally, the rule does not provide any standards or criteria upon which the Department (through the 24-hour authorization center) bases its decision to authorize or not authorize use of a vehicle credit card in excess of the Department's card limits. The granting of such authorizations is a discretionary power of the Department. Because no standards or criteria governing the exercise of this discretion are provided, this rule violates Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1981, ch. 127, par. 1004.02), which requires that any rule which implements a discretionary power to be exercised by an agency include the standards by which the agency shall exercise the power. Some guidelines must exist to guide the Department's employees in determining whether or not to approve the telephone requests. These guidelines should be included in the rules.

The Joint Committee therefore objects to Rule 5.4(D).

Date Agency Response Received: September 16, 1982

Nature of Agency Response: Modify

Rule 2.1(D) of the "Vehicle Rules"

Basis of Review: Five Year/Government Management: State Travel

Joint Committee Objection: August 17, 1982

Specific Objection:

Regulation 2.1 of the Department's Vehicle Rules establishes fuel economy standards which all new passenger automobiles purchased or leased by the State must meet. This is authorized and required by Section 1 and 2 of "An Act to require State agencies and State colleges and universities to purchase or lease passenger automobiles complying with minimum gas mileage standards" (III. Rev. Stat., 1979, ch. 127, pars. 132.501 and 132.502). Section 2 of the Act also allows the Department to grant exceptions to these standards provided that "any exemption granted (from the fuel economy standards) must be based upon need as determined by rules developed by the Department of Administrative Services." In accordance with this, Sections (A), (B), and (C) of Rule 2.1 explain how exceptions to the mileage standards are requested and upon what basis such exceptions are granted. While the criterion for granting such exceptions is somewhat vague (non-compliant vehicles must be "necessary in order to carry out the functions of the requesting agency" when an alternate compliant vehicle will not suffice), these provisions seem appropriate and consistent with statutory requirements.

Section (D) of Rule 2.1 present a problem, however, it states that:

In response to an exception request, DAS may suggest a more economical alternative to the Agency Head. If the Agency Head declines to accept the alternative vehicle, justification for such action shall be submitted to DAS and if just cause is shown the exception will be granted.

According to this provision, exceptions to the fuel economy standards are granted in such situations not based upon the

normal criteria mentioned above but upon "just cause." No where in these rules is "just cause" defined; its meaning is left totally to the discretion of the Department and may be deemed to be something quite different than the normal criteria for granting exceptions. "Just cause" is so vague a criterion that it constitutes no criterion at all. According to the Rule 2.1(D), in situations in which the Department has unsuccessfully suggested more economical alternatives, exceptions can be granted by the Department at its discretion. This appears to violate Section 2 of the Act which requires exceptions to be "based upon need as determined by rules developed by the Department."

In addition, Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1979, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power exercised by an agency "shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected."

Rule 2.1(D) violates Section 4.02 by not providing adequate standards to govern the Department's power to grant exceptions to the fuel economy standards established in that rule in situations in which the Department has suggested a more economical alternative.

The Joint Committee objects to Rule 2.1(D) of the Vehicle Rules because it fails to comply with the statutory requirements, and because it does not provide adequate standards for the exercise of the Department's power to grant exceptions to the fuel economy standards in situations in which the Department has suggested a more economical alternative.

Date Agency Response Received: September 16, 1982

Nature of Agency Response: Modify

Department of Corrections
School District #428

Administrative Regulation 501 11(D) of the Department of Corrections
School District #428

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: September 16, 1982

Specific Objection:

Administrative Regulation 501 II(D) states that "educational attendance centers may specialize in one type of education so as to provide the most efficient use of personnel and resources."

When the Department was asked to identify specific specialized centers within the correctional system, it replied that there are no such specialized centers in its correctional institutions. The rule is based on par. 24-43.14 of the Act creating the Department's school district, which empowers its Board of Education to establish special schools at various facilities within the district. The Department explained that this statutory provision, although embodied in rules, is not utilized, and that there is a standardized curriculum for all adult institutions.

One of the criteria for the Joint Committee's review of agency rules is accuracy in relation to agency operations. Rule 501 II(D) incorrectly implies the existence of specialized educational centers within the correctional system and does not, therefore, accurately reflect current Department policy and practice. For this reason the Joint Committee objects to the rule.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Repeal to Meet Objection

Administrative Regulation 401 II(B) of the Department of Corrections
School District #428

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: September 16, 1982

Specific Objection:

Rule 401 II(B) states that the School Superintendent and the associate Superintendent-Juvenile are charged with developing new programs in academic and vocational areas, and researching and evaluating current programs. The Department has explained that evaluation of new programs is conducted on a statewide basis. Data is collected on students, including pre-education and post-education data and programmatic data regarding participation by students and their success in program areas.

Chapter 122, Section 13-43.18 charges the District Board of Education with developing educational goals and methods for

evaluating the achievement of these. The rules should include standards and criteria to be used in evaluating programs in juvenile institutions, in order to fulfill the mandate of the IAPA for the inclusion of standards, and in order to implement the statutory requirement.

The Joint Committee objects to the rule because of its failure to include the necessary standards and criteria.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Amend to Meet Objection

Administrative Regulations 500 11(B)(3) and 401 11(B)(3) of the Department of Corrections School District #428

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: September 16, 1982

Specific Objection:

Administrative Regulations 500 11(B)(3) and 401 11(B)(3) state that the Superintendent "shall keep, or cause to be kept, the records and accounts as directed and required by the Board of Education, the Director, the Chief of Program Services and/or the Illinois Office of Education."

These rules follow the stipulation in ch. 122, sec. 13-43.6, which outlines the Superintendent's duties, that he shall keep or cause to be kept the records and accounts as directed and required by the Board. Neither the statute nor the rules specify those records to be kept. In reply to Joint Committee questions, the Department has listed the following as records which are kept:

- a. Student transcripts
- b. Testing information
- c. Total number, by month, participating in
 1. Vocational programs
 2. Academic programs
 3. GED testing
 4. In-house job placements
 5. Numbers served
- d. Fiscal and grant-related records by funding source with requisite documentation.

Rules providing that the Superintendent shall keep records seem to be unnecessary, in that they appear to be statements

concerning internal management which do not affect the rights or procedures available to persons or entities outside the agency. Section 3.09 of the IAPA specifically excludes "statements concerning only the internal management of an agency" from its definition of "rule." It appears, therefore, that these Administrative Regulations are not in compliance with the Act.

Moreover, rules pertaining to maintenance of student records which are applicable to all school districts in the state are among State Board of Education rules on file with the Secretary of State.

The Joint Committee, therefore, objects to Administrative Regulations 500 11(B)(3) and 401 11(B)(3).

Date Agency Response Received: January 4, 1983

Nature of Response: Amend to Meet Objection

Department of Labor

Section 39, of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 3.09 of the Illinois Administrative Procedure Act defines a rule as "(e)ach agency statement of general applicability that implements, applies, interprets, or prescribes law or policy...."

Section 39 of the "Rules to Safeguard Minimum Wage and Overtime" provides that employers are required to have on file a copy of the summary of the Act and the rules and regulations, "(t)ogether with all special interpretations issued by the Director as applied in the Act and the Rules and Regulations." (emphasis added)

The Department was asked to describe these "special interpretations," and indicate whether or not they are binding. The Department was also asked how many of these "special interpretations" have been issued and whether or not they are on file with the Secretary of State. The Department stated that despite the existence of this provision there are no

"special interpretations." The Department declined to modify the rule to delete this provision.

Although no description of what these "special interpretations" is provided, if such interpretations were issued they would appear to fit within the definition of rules as set out in Section 3.09 of the Illinois Administrative Procedure Act, and should therefore comply with the provisions of the IAPA. If no interpretations are in fact issued, the provision should be deleted. Therefore, the Joint Committee objects.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 33(e) of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 33(e) of the rules mentions an "informal, investigatory hearing" with the Labor Law Enforcement Division, for employers and employees wishing to present further evidence concerning a disputed wage claim. The Department was asked to detail the procedures for this informal investigatory hearing. The Department was also asked whether this is the only appeal mechanism for parties involved in back wages investigation and determination.

The Department responded only that the provision for informal investigative hearing specified in this section generally resolves the problem and results in settlement. The Department advised that the enforcement options are investigation, court action seeking penalties and possible IAPA contested case. The usual procedure followed when settlement does not result from investigation and informal hearing is for the Department to seek remedy in the state courts through the State's Attorney or Attorney General. The Department did not, however, indicate the procedures or guidelines by which the investigatory hearings are conducted, or indicate the criteria for determining which enforcement option would be used. It also gave no information concerning possible use of the IAPA contested case provisions.

The Department has declined to clarify its procedures or policies regarding enforcement, or to specify what rules govern the informal investigative hearing. The lack of standards is in violation of the provisions of Section 4.02 of the IAPA, and therefore, the Joint Committee objects to this rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 25(a) of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 25(a) provides that the handicapped may be employed at less than the prevailing minimum wage, and indicates that for an employer to do this the employer must make application to the Department on a form signed jointly by the employer and the prospective worker. In addition, the section states, "(t)he Director may as a prerequisite require the submission of additional information including medical or psychological examination report or an equivalent statement from a qualified Federal or State Agency." The Department was asked what standards and criteria are used when determining whether to require "additional information." The Department was also asked to define what is an "equivalent statement from a qualified Federal or State agency," and what Federal or State agencies are so qualified.

In reference to the standards and criteria used in the exercise of the Director's discretion, the Department rather enigmatically stated, "the discretion and judgment of the Director of the Department of Labor is identified as an ad hoc implementation of the provisions." The response indicates that there are no express standards and criteria by which the Director decides to require "additional information" on applications for a license to employ handicapped persons at less than the minimum wage.

In addition to the lack of standards governing when "additional information" is required, the rules are silent as to the standards or criteria governing the Director's evaluation of this information once it is received.

Section 4.02 of the Illinois Administrative Procedure Act indicates that standards and criteria for the exercise of discretion must be included in rules granting this discretion. Since the rules fail to list applicable standards and criteria, the Joint Committee objects to this rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 25(b) of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 25(b) states in pertinent part that licenses for employment of the handicapped "shall be effective for a period to be designated by the Director." The Department was asked by what standards and criteria are these periods designated by the Director.

The Department replied that the current policy for issuance of licenses for employment of the handicapped is one (1) year. This policy is not now embodied in this rule. The Department did not indicate the criteria used by the Director in designating a license period, and declined to include standards in the rule.

The rule, as it is currently written, grants the Director the discretion to determine the effective period for a license. Section 4.02 of the Illinois Administrative Procedure Act mandates that the standards and criteria for the exercise of this discretion should be expressed in the rule. In the alternative, if in fact no discretion is exercised, the actual policy of the Department should be reflected in the rule. This the Department has declined to do. Since the Department has declined to detail the standards and criteria used by the Director, the Joint Committee objects to this rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 17 of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 17 of the rules states that "The reasonable cost of meals and lodging furnished by the employer and actually used by the employee may be considered as part of the wage paid an employee...." In other words, the section provides that the minimum wage does not have to be paid entirely in money. Other types of consideration may be given, and counted toward the minimum wage requirement.

Additionally, Section 17 deals with the computation of the value of consideration not paid in money, and states in pertinent part:

The employer may charge the employee the reasonable cost to the employer of furnishing meals and/or lodgings which cost does not include profit to the employer and/or any affiliated person.

The Department was asked to define the guidelines used by the Department in determining the permissible amount an employer may charge an employee for furnished meals and/or lodging.

The Department indicated that periodically, the Illinois Department of Labor's Division of Labor Law Enforcement schedules meetings with members of the affected public. The purpose of the meetings is to establish a fixed rate per hour that employers may deduct for the cost of meals, rather than having to compute the actual cost of meals for purposes of computing compliance with wage law requirements. It was indicated that currently that rate is 15¢ per hour toward the cost of the meal.

It was noted that an employer may apply an "actual measure of costs" standard in lieu of the 15¢ per hour fixed rate. The Department advised that the "actual measure of cost" involves the calculation of cost of ingredients and preparation of meals. In an establishment which sells meals to the public or its members, items such as management salaries, employee insurance, payroll taxes, menus, decorations, operating supplies, laundry, telephone, maintenance services,

miscellaneous services, advertising and promotion, building rental, equipment rental, licenses and taxes, insurance, depreciation and franchise costs, and general administrative costs of the operation of the employer's business establishment are not considered a significant part of the cost of employee's meals.

As is evident from the foregoing discussion, the Department's present Section 17 is not an accurate reflection of the policies, guidelines, standards and criteria used by the Department in determining the value of meals and lodging. The Department has declined to modify the section to reflect actual practices and guidelines.

Section 3.09 of the Illinois Administrative Procedure Act defines a rule as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy...." The Department has detailed a procedure by which it sets an hourly rate which may be used in lieu of determining the actual cost of meals. However, the rules are silent as to this procedure. Nor do the rules list this rate which is computed as the result of the procedure.

Therefore, the Joint Committee objects to Section 17 of the Department of Labor's "Rules to Safeguard the Minimum Wage and Overtime."

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 7 of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

The Minimum Wage Law at Ill. Rev. Stat., ch. 48, sec. 3(d)(1) defines the word "employee" as:

any individual permitted to work
by an employer in an occupation,
but does not include any individual
permitted to work:

- (1) for an employer employing fewer than 4 employees exclusive of the employer's parent, spouse or child or other members of his immediate family;

The Department of Labor's "Rules to Safeguard Minimum Wage and Overtime" Section 7 states:

An employee who becomes an employee according to this Act remains an employee for the rest of the quarter in which the fourth person was hired or the entire pay period in which the fourth person was hired, whichever is longer.

The rule makes no sense if not read in conjunction with the statutory provision to which it refers. The rule has no citation to the statutory provision to which it refers, neither does the rule make any indication as to what is meant by the reference to the term "fourth person." The Department has declined to modify the rule to indicate to what it refers, or to explain the meaning of the term "fourth person." Therefore, since the rule in its present form is vague, unclear, and confusing, the Joint Committee objects to this rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 3 of the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 3 of the rules is a definition of the word "wages" as used in the rules. The section states in pertinent part:

Wages means compensation due to an employee by reason of his employment including allowances determined by the Director in accordance with the provisions of

this act.... When the reasonable cost of these allowances are not recorded by the employer, the Director will determine the fair value of such means, lodging or other facilities for defined classes of employees based on the average cost to the employer or groups of employers, or other appropriate measure of fair value. (emphasis added)

The Department was asked to detail the standards and criteria used by the Director in determining "other appropriate measure(s) of fair value." The Department advised that the phrase deals with allowances from an employer that are given to employees in lieu of monetary remuneration. The Department has the power to calculate the value of these allowances in order to determine whether or not an employer is in compliance with the minimum wage and overtime laws. Apparently, the language "other appropriate measure of fair value" is an attempt by the Department to allow it to use any method it wishes to calculate the value of allowances.

Section 4.02 of the IAPA (III. Rev. Stat. 1979, ch. 127, pars. 1001-1021) mandates that:

Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power.

The method used by the Department in calculating these additional "benefits" can have a profound effect on the final determination of the wage being paid. Depending on what method is used, an employer may be found to be meeting, or failing to meet, the minimum wage established by law.

The Department has refused to define when, how, and upon what basis the Director determines the value of meals, lodging and other facilities when each are considered as part of the wages paid to the employee. The current rule allows for considerable discretion, with no guidelines for exercise of that discretion. Since the Department has refused to provide standards and criteria for the exercise of the Department's discretion, the Joint Committee objects to this rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rules to Safeguard Minimum Wage and Overtime

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

As noted previously, the Department declined to make any changes whatsoever in its "Rules to Safeguard Minimum Wage and Overtime." In addition to the more substantive problems with the rules discussed previously, there are a number of technical errors and omissions which, while not serious, nonetheless make the rules sloppy, out-of-date, and more difficult to understand.

At various places in the rules, references are made, explicitly and implicitly, to various state and federal statutes. The Department has been asked to include the appropriate citations in the rules, so the public can more easily find the statutes referenced. The Department declined to provide these citations.

The Department's rules also contain obsolete references to the Fair Employment Practices Act and Commission, a number of redundant phrases and grammatical errors. The Department has refused to make any technical changes in the rules when these deficiencies were pointed out.

Section 7.07 of the Illinois Administrative Procedure Act indicates that the Joint Committee "(m)ay examine any rule for the purpose of determining...whether the rule is in proper form."

Section 250.1400(b)(4) of the Joint Committee's Operational Rules (1 Ill. Adm. Code 250.1400(b)(4)) lists the criteria for review of each set of rules stating in relevant part:

- (4) Are the rules free of serious technical errors, redundancies and typographical errors, which could affect the meaning of the rules?

By allowing the rules to continue to exist in their present form, rife with technical errors, the Department is affecting the ability of the affected public to know and understand the requirements imposed by this rulemaking.

Therefore, the Joint Committee objects to the Department of Labor's "Rules to Safeguard Minimum Wage and Overtime" because of their technical defects.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 1 of the Department of Labor's "Rules in Relation to the Administration of the Private Employment Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Rule 1, quoting Section 1 of the Act, provides:

In determining honesty, truthfulness, integrity, moral character and business integrity under this section, the Department may take into consideration any criminal conviction of the applicant, but such conviction shall not operate as a bar to licensing.

The rule does not indicate the standards used by the Department in evaluating the effect of a criminal conviction of the applicant's moral character.

The Department has explained, in conference, that it considers the type of conviction, length of time since the violation occurred, and degree of rehabilitation observed from intervening work and business experience.

The Department has stated that the situation has come up only once in the last three years, at which time the applicant withdrew his request for approval, so the Department believes that insertion of standards and criteria are not necessary. However, the evaluation of factors is important, since the rule is susceptible to interpretation to permit rumor and innuendo to serve as a basis for denial of a license. Also, the Department's response ignores the requirements of Section 4.02 of the Illinois Administrative Procedure Act, which requires such standards.

In addition, members of the public who are subject to Department regulation should be able to gain a clear understanding of what may be required of them. As the rule currently reads, this may not be possible because of the lack of information. The rules of the Department should be written so that they can be understood, and so that they are not susceptible to abusive use. Because of this lack of clearly defined requirements, and because the rule lacks standards by which discretionary power is exercised, the Joint Committee objects to Rule 1.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Department of Registration and Education

Sections 210.180, 210.190, and 210.200 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Sections 210.180, 210.190, and 210.200 contain requirements designed to regulate the methods used by collection agencies to account for creditors' funds. Section 210.180 requires an agency to render an itemized statement of account and remit all money due to the creditor within 60 days of payment on an account. It also allows a collection agency to demand a statement of payments made directly to the creditor; the agency is relieved of its obligation to remit to the creditor until such statement is received. Section 210.200 requires a collection agency to maintain a separate "trust account" in which all monies received on assigned claims are to be deposited. This account is required to at all times contain sufficient funds owing to all creditors of the agency, and disbursements from such accounts may be made only to creditors, the agency's attorney, debtors (as refunds), or the agency itself when contractually due. Paragraph (c) explains the requirements applicable where the agency holds money belonging to a creditor or debtor who cannot be located. (The Department has agreed to delete paragraph (c) as exceeding the Department's statutory authority.) Section 210.190 requires a collection agency to maintain an accounting system which shows monies due and owing to creditors and funds in

the trust account, describes the books and records which the agency must keep for four years, and requires that the trust account be reconciled monthly with the agency's records.

Because the Act contains no such record keeping requirements nor a provision expressly authorizing the Department to impose such requirements, the Department was asked to state its statutory authority for the provisions described above. The Department replied that the record keeping requirements provide the only method by which the Department can inspect and enforce compliance with the Act, and, quoting from Section 13, that they are, therefore, "necessary for the administration of the Act." Section 13 authorizes the Director to make all reasonable procedural rules and regulations necessary for the administration, enforcement, or execution of the Act. It appears that not only are Sections 210.180, 210.190, and 210.200 not procedural, but that they are also not necessary for the administration, enforcement, and execution of the Act.

The General Assembly rejected provisions containing protections similar to some of those contained in these sections. The House considered including some protections for creditors in the Act. House Bill 2588, which was eventually amended, passed, and approved as the Collection Agency Act, originally prohibited collection agencies from commingling money collected for a customer with the agency's own funds, from using any part of a customer's money in the conduct of the agency's own business, and from refusing (1) "to return any claim or claims upon written request of the creditor...after the tender of such amounts, if any, as may be due and owing to the agency," (2) "to account to its clients for all money collected within 30 days from the last day of the month in which the same is collected," (3) "to return to the creditor any valuable papers deposited with a claim when such claim is returned," or (4) "to furnish at intervals of not less than 90 days, upon the written request of the claimant or forwarder, a written report upon claims received from such claimant or forwarder." (H.B.2588, 78th General Assembly, Sections 9(r), (l), (n), (o), and (p)) Each of these provisions was deleted without replacement when the list of unlawful practices was revised in committee (H.B. 2588, House Committee Amendment No. 1), possibly because it was felt that such protections were not necessary since creditors had other remedies and could exert commercial leverage. (See 1975 U. Ill. Law. F. 441) Despite this legislative consideration and rejection, the prohibitions against commingling and refusing or failing to account to creditors for monies were "enacted" by the Department and enhanced with detailed accounting requirements.

Only two of the five parts of the Act are directly concerned with the manner in which collection agencies operate. (See "Background and Commentary," Page 252) Sections 9 through

9.21 list twenty one practices which are deemed unlawful when used against debtors in the collection of debts. Not one of these provisions is designed to protect creditors from the mishandling of their funds by collection agencies. Similarly, the criminal penalties provided by the Act are meant to deter certain abusive or deceptive practices used to obtain payment from debtors rather than to protect creditors from possible mishandling of funds.

The Department stated that the Act could not be enforced without the requirements of Sections 210.180, 210.190, and 210.200, but it identified not one section of the Act which is enforced by virtue of these rules. In addition, the legislature considered and rejected provisions for the benefit of creditors, some of which were similar to those adopted by the Department. Thus, it appears that the legislature did not intend for the Department to engage in such regulation of collection agencies and that Sections 210.180, 210.190, and 210.200 are not necessary for the enforcement or administration of the Act as required by Section 13.

Another argument put forward by the Department is that statutory authority for the requirements at issue can be implied from Section 12 of the Act which allows the Department to suspend or revoke a license for failure to produce books and records requested by the Department. Section 12, however, appears to allow the Department to punish a collection agency for refusing to produce for inspection records it keeps in the course of doing business as opposed to allowing the Department to specify the records to be kept.

Because they are not statutorily authorized, the Joint Committee objects to Sections 210.180, 210.190, and 210.200 of the "Rules and Regulations for the Administration of the Collection Agency Act."

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 210.170 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 12(a) of the Act authorizes the Department to revoke or suspend a collection agency's registration certificate if the agency fails to produce books and records requested by the Director or a person designated by the Director. Section 210.170 requires an agency to keep books, records, forms, and stationery available to Department investigators upon request. Failure to do so is grounds for denial, suspension, or revocation of a certificate.

When asked what standards are applied by the Department in deciding to suspend or revoke under Section 210.170, the Department replied that it relies on the sufficiency of the evidence and prosecutorial discretion. The Department would not want to inform violators of such standards and declined to include standards in the rule.

The Director's power to revoke or suspend a certificate for a given reason is discretionary, and Section 210.170 implements this discretionary power. Section 4.02 of the IAPA requires a rule which implements a discretionary power to contain standards by which to guide the exercise of that discretion. Section 210.170 does not contain such standards. Therefore, the Joint Committee objects to Section 210.170.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 210.50 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Under Section 9.19 of the Collection Agency Act, it is an unlawful practice for a debt collector "to represent that the debt collector is an attorney at law if he is not." (Ill. Rev. Stat. 1979, ch. 111, par. 2031) Section 210.50 of the Rules makes it a violation of the Act for an employee of a collection agency to pose as an attorney when the employee is not an attorney licensed with the State of Illinois.

The Collection Agency Act requires any collection agency which operates in this State to register under the Act. Thus, a collection agency headquartered in Iowa must register in Illinois to collect debts in Illinois, even if the debt was

incurred in Iowa. Under the present rule, an attorney licensed only in Iowa and employed by the Iowa collection agency would not be able to use a letterhead stating that he is an attorney in collecting from the Illinois resident. The Act, however, does not require that the debt collector/attorney be licensed to practice in Illinois.

When questioned as to its authority to impose this requirement, the Department cited Section 13 of the Act which contains the Department's general authority to promulgate all reasonable procedural rules necessary for the administration of the Act. The Department also argues that the out-of-state attorney would be engaged in the unauthorized practice of law, but the assertion that an out-of-state attorney could not hold himself out as an attorney in demanding payment from an Illinois resident is questionable. Supreme Court Rule 707 accords State courts the discretion to allow an attorney from another jurisdiction to participate in trial or argument of a cause in which the attorney is employed (Ill. Rev. Stat. 1979, ch. 110A, par. 707). Even assuming the correctness of the Department's proposition, the Department is not authorized to police attorneys and enforce the Code of Professional Responsibility for attorneys.

It also appears that the evil to be prevented by the statute's provision would not call for prohibition of actual attorneys from representing collection agencies.

The Act prohibits the practice of debt collectors representing themselves as attorneys if they are not attorneys. The Department has added the substantive requirement that debt collectors must be attorneys licensed with the State of Illinois in order to be able to hold themselves out as attorneys. Section 210.50 imposes a substantive requirement, and its necessity is questionable. The Department appears to have exceeded its statutory authority. Therefore, the Joint Committee objects to Section 210.50.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Sections 210.140, 210.150, 210.160, 210.180, 210.190 and 210.200 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

The Department's Rules contain two sets of record keeping and accounting requirements. One set, consisting of Sections 210.140, 210.150, and 210.160, relates to debtor collection accounts. Pursuant to Section 210.140, registrants under the Collection Agency Act must prominently display their current certificates of registration and keep extensive account records for each collection account exceeding \$100, including complete information regarding communications concerning a given account, copies of correspondence, collection dates, and a documented statement of all additional charges. Sections 210.150 and 210.160 describe procedures for maintaining debtors' accounts and crediting payments when a debtor has multiple creditors.

The other set regulates record keeping with respect to creditors' accounts. With an exception where creditors fail to inform the agency of payments made directly to the creditor, Section 210.180 requires the agency to send remittance and an itemized statement to the creditor within 60 days after any payment is received. Pursuant to Section 210.190, each agency which collects funds for creditors must maintain an accounting system which shows monies due to creditors and must keep certain specified records detailing receipts, disbursements, and contractual arrangements. Section 210.200 requires each agency to maintain separate "trust accounts" for monies received on assigned claims and out of which disbursements are limited.

Because Section 13 of the Act authorizes the Department to make and enforce only procedural rules and regulations, and because the Act contains no record keeping requirements nor provision specifically authorizing the imposition of such requirements, the Department was asked to state its authority for imposing these requirements. The Department relies on Section 13, on Section 12(a), which allows for revocation or suspension of the certificate of a registrant who fails to produce books and records requested by the Director, and on Section 12(b), which allows for revocation or suspension if the registrant violates any provision of the Act or regulations promulgated thereunder.

Section 13 of the Act (Ill. Rev. Stat. 1979, ch. 111, par. 2038) states:

The Director shall make and file...all reasonable procedural rules and regulations as shall be necessary for the administration of this Act. The Director is authorized and empowered to make and enforce such reasonable

procedural rules and regulations, directions, decisions, and findings as may be necessary for the enforcement and execution of this Act. (emphasis added)

The Department argues that the rules are reasonable and necessary to preserve information used to determine whether accounts have been handled properly and to follow through on debtors' complaints. Assuming the reasonableness and necessity of the rules, there remains the question of whether or not they are "procedural" within the meaning of that term in the Act. To support the Department's position that the rules are authorized by Section 13 is to argue either that the word "procedural" was not meant to limit the Department's rulemaking authority or that record keeping requirements are procedural.

The fact that one does not look to statutory intent unless there is some ambiguity notwithstanding, legislative history indicates that the word "procedural" was indeed intended to limit the scope of the Department's rulemaking authority. H.B. 2588 (78th General Assembly) originally authorized the Department to make all necessary, reasonable rules and regulations. Insertion of the word "procedural" by amendment (Senate Amendment No. 2) indicates a conscious attempt to limit the Department's rulemaking authority.

The Act does not define "procedural," and there has been no reported Illinois case law construing Section 13, but it is a well-accepted rule of statutory construction that statutory language will be given its ordinary meaning absent statutory definitions or other statutory indications evidencing a different legislative intent. According to Webster's Third New International Dictionary, unabridged, "procedural" means "of or relating to procedure...esp: of or relating to the procedure used by courts or other bodies (as governmental agencies) in the administration of substantive law." Blacks Law Dictionary, Rev. Fourth Ed., states that procedural law is "(t)hat which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on a suit." It also tells us that "procedure" is "(t)hat which regulates the formal steps in an action or other judicial proceeding; a form, manner and order of conducting suits or prosecutions." Federal case law under the U.S. Administrative Procedure Act has construed the phrase "rules of agency organization, practice, or procedure" as meaning "technical regulation of the form of agency actions and proceedings." (5 U.S.C.A. Sec. 553, n.136 (1977)) The requirements here at issue do not appear to come within any of these definitions. Rather, procedural rules under this Act would be those which specify the form, manner, and order of conducting investigations and hearings or obtaining certification.

With respect to Sections 210.180, 210.190, and 210.200, the Department's argument is particularly weak since compliance with these provisions is not related to any practices made unlawful by the Act. In fact, the legislature considered and rejected provisions that would have provided some protections similar to those contained in these sections.

Since the six sections described above are not "procedural rules" within the plain and ordinary meaning of that term, and since there are no indications of statutory intent that would require one to assign a special meaning to the term, it would appear that the rules in question expand and exceed the authority vested in the Department through Section 13.

The Department also cited Section 12(a) of the Act as authority for the record keeping requirements described above. Section 12 authorizes the Director to revoke or suspend a certificate "if a registrant: (a) fails to produce books and records requested by the Director...." The nature of the business would demand that a collection agency keep financial records, and certainly some such records would have to be kept for tax purposes. The fact that the Director is authorized to request the production of what books and records exist does not mean that the Director is authorized to specify the records to be kept.

The final statutory provision the Department relies on is Section 12(b). Section 12(b) authorizes revocation or suspension of a certification "if a registrant:...(b)...violates any other provision of this Act or regulations promulgated hereunder." Apparently the Department's argument is that, since it can punish violations of its regulations, it has the authority to promulgate substantive regulations. This argument would have more merit were there no provision relating to the Department's rulemaking authority. However, Section 9.06 authorizes the Director to define harassment, Section 5 allows the Department to require application information it deems necessary, and Section 13 authorizes promulgation of procedural rules. Given these implied and express grants of rulemaking authority, it is not necessary to construe a provision which provides for violations of rules as actually authorizing the Department to promulgate rules.

Apart from specific implied grants of rulemaking authority, the Department is limited to promulgating procedural rules. Sections 210.140, 210.150, 210.160, 210.180, 210.190, and 210.200 are substantive rules the violation of which the Department believes is punishable by revocation or suspension of a registrant's certificate under Section 12(b) of the Act. Therefore, the Joint Committee objects to these sections because they exceed the Department's authority to promulgate procedural rules.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Section 210.30 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

According to Sections 9 and 9.06 of the Act, it is an unlawful practice for a collector, while collecting or attempting to collect a debt, "to communicate with the debtor or any member of his family at such time of day or night and with such frequency as may be determined by the Director to constitute harassment of the debtor or any member of his family." (Ill. Rev. Stat. 1979, ch. 111, par. 2018) The Director has, by rule, made proof of the following acts a prima facie case of harassment of a debtor by a collection agency:

- 1) Communication or attempting communication with a debtor by mail, telephone or any other means of communication either at his residence or at his place of employment more than once in any period of seven days, (emphasis added) or
- 2) Communicating or attempting to communicate with the debtor or any member of his family or with the residence of either, by telephone, in person or by other means of communication before the hour of 8:00 A.M. or after the hour of 8:00 P.M., on any day.

The Illinois Collector's Association has argued, in communications with the Joint Committee, that the above-quoted rules constitute an unconstitutional infringement on the collection agencies right of free speech, and that the restriction goes far beyond that intended by the General Assembly when enacting the Collection Agency Act.

In recent years, the Supreme Court has recognized that, even though "commercial speech" is protected under the First Amendment, commercial speech is afforded only a limited measure of protection, and may be regulated in ways that might be impermissible in a noncommercial context. (See, for example, Ohralik v. Ohio State Bar Association, 436 U.S. 447, 98 S.Ct. 1912 (1978)). While arguments on either side of the issue are not without some merit, it appears that, on balance, the relevant judicial authority is by no means conclusive that the regulation here in question unconstitutionally impinges on the free speech rights of collection agencies.

The Collection Association also suggests that the restrictions imposed by Section 210.30 goes far beyond that anticipated and intended when the legislation was enacted. The relevant portion of the statute upon which the Department relies for authority is Section 9.06 of the Collection Agency Act. As noted above, that section provides that it is an unlawful practice "to communicate with the debtor or any member of his family at such time of day or night and with such frequency as may be determined by the Director to constitute harassment...." (Ill. Rev. Stat. 1979, ch. 111, par. 2018) (emphasis added). While this appears to give the Director the unbridled authority to regulate the times of day and frequency with which a collector may contact a debtor, there is no question that the Director's authority to define "harassment" is limited to prohibiting conduct that could reasonably have been considered harassing by the legislature. For example, it is beyond serious argument that a regulation banning contact more than once per year, or outside a selected 30 minute time period would be beyond the scope of authority intended to be granted by the statute. The Illinois Collector's Association maintains that limiting contacts or attempted contacts with a debtor or a member of his family to once per week--whether by mail, telephone, or otherwise--is an unreasonable limitation on legitimate business activity, and therefore is beyond the scope of the authority intended to be granted by the statute. This position seems to be supported by the statement of Representative C.L. McCormick, the sponsor of an earlier version of the Act, who stated that the Act was designed to clean up "twist arm" tactics used by some collection agencies. (H.B. 1569, 77th General Assembly, Transcript of House Debates, Day 142, June 26, 1972).

Two non-threatening and non-abusive communications with a debtor within a week regarding the collection of a debt may not be the kind of "twist arm" method the Legislature would have considered "harassment." Yet, this is the result, given the Department's strict application of Section 210.30. The Joint Committee therefore objects to Section 210.30 as going beyond legislative intent.

Nature of Agency Response: Response Pending

Section 210.30 of the Department of Registration and Education's "Rules and Regulations for the Administration of the Collection Agency Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Sections 9 and 9.06 of the Collection Agency Act make it an unlawful practice for a collection agency "to communicate with the debtor or any member of his family at such a time of day or night and with such frequency as may be determined by the Director to constitute harassment of the debtor or any member of his family." (Ill. Rev. Stat. 1979, ch. 111, par. 2018) Section 210.30 of the Rules defines "harassment" for purposes of Section 9.06 of the Act as communication or attempting communication with the debtor at home or work more than once in seven days, or with the debtor or members of his family between the hours of 8:00 p.m. and 8:00 a.m.

The Department was questioned as to its authority to make an attempt to communicate with a debtor or his family an unlawful practice. The Department cited no authority. Rather, the Department responded with reasons supporting its position that attempted communication should be considered harassment.

According to the Department, an attempt to communicate with a debtor at his place of employment "includes communicating with other employees, perhaps in a manner to interfere with that other employee's work or to jeopardize the debtor's job." While types of communications with a debtor's fellow employees could be detrimental to the debtor, Section 9.06 clearly applies to communication "with the debtor or any member of his family," not to communications with co-workers. If the debt collector leaves a message with employees or otherwise intends to reach the debtor and the message actually reaches the debtor, then the collector has communicated with the debtor within the meaning of the Act. Furthermore, disclosure or the threat of disclosure of information relating to indebtedness to a person who has no legitimate business need for the information is an unlawful practice under Section 9.08 of the Act.

Another reason put forth by the Department is that an attempt to communicate at the residence of the debtor could cause harassment of his family. Section 9.06, however, specifically provides that it can be harassment to communicate with the

debtor's family. It is not necessary to outlaw an attempt to communicate with the debtor in order to protect the family.

The Department also points out that the debt collector could ring the debtor's phone and hang up when the phone is answered. This kind of activity could be covered by existing statutory provisions without expanding the coverage of Section 9.06 to "attempting communication." Ringing the phone itself could be considered an act of communication and covered by Section 9.06. Section 9.12 of the Act as interpreted by Section 210.60 of the Rules requires any communication by the debt collector to identify the debt collector. Furthermore, harassment by telephone, an offense which includes the act of causing the telephone of another to ring with intent to harass, is a Class B misdemeanor. (Ill. Rev. Stat. 1979, ch. 134, pars. 16.4-1, 16.5)

The Department has admitted that an attempt to communicate which caused no communication of any kind would not be harassment. Yet, pursuant to the present rule, a collection agency would be guilty of harassment if it called the debtor twice within a week, even if both calls were unanswered.

Section 9.06 of the Act makes it an unlawful practice to communicate with the debtor with a frequency or at times constituting harassment. Section 210.30 of the rules expands the coverage of this provision to include attempting communication with the debtor. The Department cites no authority for expanding the Act nor evidence of legislative intent supporting its position. Therefore, the Joint Committee objects to Section 210.30.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Department of Revenue

Rules of the Department of Revenue Relating to Property Tax

Basis of Review: Complaint

Joint Committee Objection: March 23, 1982

Specific Objection:

Rule 7 of the "Rules of the Department of Revenue Relating to Property Tax" sets forth requirements for hearings held by and records of county assessors, supervisors of assessments, or boards of assessors. Subparagraph 2(a) requires these

assessing officials to "prepare and maintain tax maps, and property record cards for all of the real estate within their jurisdiction in the form prescribed by the Department in Illinois Real Property Appraisal Manual." It further requires local assessing officials to enter upon permanent record cards the measurements, descriptions, and classification of buildings and improvements and the elements of valuation of land "in the manner prescribed by the Department in the Illinois Real Property Appraisal Manual."

Section 6 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1006) requires that an agency file with the Secretary of State the full text of any rule adopted by it. Pursuant to Section 6.01 (Ill. Rev. Stat., ch. 127, par. 1006.01), exceptions to the full text requirement are allowed for the incorporation by reference of (1) federal rules and (2) standards or guidelines of trade associations or other entities. As the Real Property Appraisal Manual is published and maintained by the Department, it does not fall into either of these categories.

The full text of the Rule 7 has not been published in accordance with Section 6 of the Illinois Administrative Procedure Act. Therefore, the Joint Committee objects to Rule 7.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Constitutional Offices

Attorney General

Rule 110 of the Attorney General's "General Rules Under the Franchise Disclosure Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 3(22) of the Franchise Disclosure Act (Ill. Rev. Stat., 1979, ch. 121½, par. 703) defines "franchise broker" as "any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise and is not a franchisor or subfranchisor with respect to such franchise." Rule 110 indicates that a director, officer,

employee, partner, or affiliated company of a franchisor or subfranchisor is not a franchise broker. Since the statute provides that the franchisor and subfranchisor are not considered to be brokers, a rule making clear that individuals who are part of the franchisor or subfranchisor - director, officer, employee, partner - is a reasonable interpretation. The issue is whether or not an affiliated company of the franchisor or subfranchisor is "a franchisor or subfranchisor with respect to the franchise."

The franchisor is the person who grants the franchise, the right to engage in the marketing of goods or services under a plan or system the franchisor prescribed in substantial part. (Id. par. 703(1)) A subfranchisor is one who is granted the right to sell or negotiate the sale of franchises in the name of or on behalf of the franchisor in consideration of payment of a franchise fee to the franchisor. Franchisors, subfranchisors and franchise brokers are required to register with the Attorney General and to register any salespersons representing them in the State. Franchise brokers must meet more exacting registration requirements than salespersons and must pay a fee and file a consent to service of process - two requirements salespersons need not meet. Rule 110 treats an affiliated company which is engaged in the business of representing the franchisor in selling franchises as a salesperson rather than a broker.

An affiliated company includes any company owned or controlled by the franchisor, a controlling parent or controlled subsidiary of the franchisor, a controlled subsidiary of the controlling parent of the franchisor, and any other company or person controlled by the person or persons who control the franchisor. (Id. Section 3(18)) Thus, a company which is controlled by the parent of the franchisor and which is engaged in the business of representing the franchisor in selling or offering franchises is considered a salesperson and not a broker. The Attorney General stated that the policy with regard to affiliated companies has proven workable and that franchisors may not like a change to treating affiliated companies as brokers.

Nothing in the Act indicates that such a company be considered as identical to or part of the franchisor. In fact, Section 5 of the Act requires the disclosure statement to contain the name of any affiliated company of the franchisor which the franchisor will recommend to franchisees as suppliers of goods or services, and to state the terms of any financing arrangements when offered "by the franchisor or his agent or affiliated company."

Thus, the statute itself draws a clear distinction between the franchisor and an affiliated company. The Attorney General, however, has treated these the same for the purposes of Rule 110. The Attorney General does have the power to exempt,

by rule, any franchise broker from the registration requirements of the Act if he finds enforcement of the Act unnecessary in the public interest or for other reasons listed in Section 12 of the Act. If the Attorney General wishes to exempt affiliated companies from broker registration requirements, however, he should do so by use of his power to grant exemptions rather than by tampering with the statutory definition of "franchise broker."

Since the Act does not appear to treat an affiliated company of the franchisor as the franchisor, the affiliated company representing the franchisor in selling a franchise would appear to be a franchise broker within the meaning of Section 3(22) of the Act. Rule 110 states that such an affiliated company would not be franchise broker. Therefore the Joint Committee objects to Rule 110.

Date Agency Response Received: December 15, 1982

Nature of Agency Response: Amend to Meet Objection

Rule 206 of the Attorney General's "General Rules Under the Franchise Disclosure Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 12 of the Franchise Disclosure Act (Ill. Rev. Stat. 1979, ch. 121 $\frac{1}{2}$, par. 712) authorizes the Attorney General to exempt persons from the disclosure and registration requirements of the Act by rule or order, and subject to such terms as he may prescribe, if he finds that enforcement of the Act "is not necessary in the public interest or (1) for the protection of any class of prospective franchisees or subfranchisors or (2) by reason of the investment involved or (3) because of the limited character of the offering."

Rule 206 lists information required of an applicant for an exemption and factors to be considered in making the exemption determination. The factors listed are the net worth and financial condition of the buyer, the buyer's prior business experience with the franchisor, whether the buyer is represented by counsel, and the amount of the required investment. In order to present information on these factors to the Attorney General, however, the franchisor would in all likelihood, be required to know and have contacted the

prospective franchisee. Because the party selling franchises must satisfy registration and disclosure requirements prior to contacting prospective buyers, the Attorney General has agreed to delete that portion of Rule 206 specifying the factors to be considered.

When asked whether more specific standards or factors are applied in making an exemption determination, the Attorney General replied that the limited character of the offering is the primary factor considered and that, in general, an exemption is granted if the franchisor intends to sell only one or two franchises in Illinois. That Attorney General does not wish to incorporate such a definite standard into the rules for two reasons. First, he wishes to be able to consider all information and make decisions on a case-by-case basis. Second, franchisors who desire to move into Illinois beginning with one to two test franchises, and who would now register and file disclosure statements initially, would obtain exemptions and wait until the success of the tests could be determined before complying.

Section 12 of the Act accords the Attorney General the discretionary power to grant exemptions when he finds enforcement of the Act is not necessary in the public interest, not necessary for the protection of any class of prospective franchises or subfranchises, not necessary by reason of the investment involved, or not necessary because of the limited character of the offering. The Attorney General has broad discretion to determine whether or not enforcement of the Act is necessary for any of the four reasons.

Rule 206 lists the information required to be submitted to the Attorney General for consideration in making an exemption determination. Thus, Rule 206 implements the Attorney General's discretionary power to grant exemptions. Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1979, ch. 127, par. 1004.02) requires each rule which implements a discretionary power to be exercised by an agency to include the standards by which the agency shall exercise the power. Rule 206 does not include such standards. Therefore the Joint Committee objects to Rule 206. (It should be noted that Section 12 was held to be an unconstitutional delegation of legislative power in *People v. Carter*, 102 Ill.App.3d 796, 430 N.E.2d 31 (1st Dist. 1981) (Petition for Leave to Appeal allowed))

Date Agency Response Received: December 15, 1982

Nature of Agency Response: Amend to Meet Objection

Rule 305 of the Attorney General's "Rules Under the Franchise Disclosure Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

The sale of a franchise involves payment of a franchise fee and other funds by the franchisee to the franchisor in return for the right to market a product or service. Often, the franchisor obligates himself to provide real estate, improvements, equipment, training, or other items in order to establish and open the business. The Attorney General examines the franchisor's financial statements to determine the adequacy of the franchisor's financial resources to meet these initial obligations. If the franchisor fails to demonstrate that adequate financial arrangements have been made to meet the obligations, the Attorney General may, pursuant to Section 11 of the Act, require the escrow of franchise fees and other funds paid by the franchisee until the obligations have been fulfilled.

If escrow is required, the escrow agreement is to take a form substantially like that prescribed in Rule 305(a). The terms of the agreement require the franchisor to deposit franchisee funds with the escrowee (bank) who shall hold such monies in a separate account. The agreement specifies the conditions upon the occurrence of which the bank is to pay out funds plus interest and requires in paragraph (7) that escrow account funds be invested in obligations of the United States or in savings accounts of the bank. The Joint Committee staff questioned the statutory authority for regulating the investment of funds held in escrow.

The Attorney General relies on Section 27 of the Act which authorizes "reasonable rules as are necessary to administer and enforce the Act." It is not clear, however, how paragraph (7) of the escrow agreement aids in the administration or enforcement of the Act. Section 11 allows the Attorney General to require the escrow of certain funds "until such obligations have been fulfilled." The provision specifying the conditions for release of the funds appears to implement this provision. However, nothing in the text of the Act suggests that the Attorney General should have the authority to specify the uses to which the money shall be put while in escrow.

Under Illinois law, an escrowee is bound by the escrow instructions. Reinhold's Estate v. Mansfield, 90 Ill.App.3d 224, 412 N.E.2d 1146 (1980); Toro Petroleum Corp. v. Newell, 34 Ill.App.3d 458, 338 N.E.2d 491 (1974). Therefore, it is logical for an escrow agreement to include a provision regarding the handling of funds while in escrow. It is not clear that the Attorney General's authority extends to

requiring certain forms of investment. The Attorney General stated that the provision is designed to protect the funds, and advised staff that any reasonable placement of funds would be acceptable. However, the Attorney General declined to allow for "any reasonable placement" in the rule but did agree to amend the rule to allow investment, at the option of the franchisor, in money market mutual funds with assets greater than one billion dollars and in certificates of deposit in addition to savings accounts and U.S. government obligations. Apparently these are the only investment alternatives deemed "reasonable" by the Attorney General.

This modification, however, assumes that the Attorney General has the authority to regulate investment, and for the reasons expressed above, it is the opinion of the Joint Committee that the Attorney General has no such authority. Therefore, the Joint Committee objects to Rule 305.

Date Agency Response Received: December 15, 1982

Nature of Agency Response: Amend to Meet Objection

Rule 703 of the Attorney General's "Rules Under the Franchise Disclosure Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Rule 703 sets forth requirements relating to the granting of continuances in hearings under the Act. Clauses (a) and (b) require that a request for a continuance be made in writing at least three days prior to the hearing date and be served on all parties, respectively. Clause (c) states that such a request "creates no presumption that a continuance will be granted by the hearing officer." The Joint Committee questioned the Attorney General as to the types of circumstances in which continuances will be granted.

The Attorney General explained that, pursuant to Section 18.1 of the Act, a person against whom an order is issued has only fifteen days within which to request a hearing. Hearings are often requested simply to avoid waiving the right to a hearing; often the hearing is not wanted at all. The Attorney General denies requests for continuances when "no valid reason" for granting the request is shown. Originally, the Attorney General stated that "valid reasons" would be found in

circumstances which create "extreme hardship" on the party and agreed to delete clause (c) and replace it with a statement that continuances will be granted upon a showing of extreme hardship. Examples of "extreme hardship" included such circumstances as death in the family or disabling injury or illness. The Attorney General stated, however, that continuances would still be granted for reasons which would not be included in the rule because the Attorney General would not wish to be bound to granting continuances in such situations. In a preliminary draft of the revised rules, the Attorney General has deleted clause (c), but its replacement states that continuances will be granted upon a showing of "good cause."

Section 4.02 of the IAPA requires a rule implementing a discretionary power to state, as clearly and precisely as practicable under the circumstances, the standards by which to guide the exercise of that power. Rule 703 implements the Attorney General's discretionary power to grant continuances. The standard included in the rule to guide the exercise of that discretion is "good cause." "Good cause" can mean different things in different contexts and does not appear to satisfy the statutory mandate that standards be stated as precisely as practicable. Therefore, the Joint Committee objects to Rule 7.03.

Date Agency Response Received: December 15, 1982

Nature of Agency Response: Amend to Meet Objection

Miscellaneous Agencies

Illinois Commerce Commission

Section 9(b) of the Illinois Commerce Commission's General Order 1 under the Illinois Commercial Relocation of Trespassing Vehicles Law

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: November 17, 1982

Specific Objection:

Section 9(b), which deals with security requirements, states, in part, that "upon good cause shown, the Commission may reinstate any license which has been in suspension for more than twenty (20) days." The rule, however, gives no indication of what causes may be considered sufficient to allow reinstatement.

As the rule currently reads, the determination of what constitutes "good cause" lies totally within the discretion of the Commission. When the Commission was asked if it had developed standards and criteria defining "good cause," the Commission stated that the provisions of Section 9(b) have not been invoked and that "good cause" has not yet been construed.

Section 4.02 of the IAPA requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power. Clearly, Section 9(b) provides a discretionary power, without any standards or guidelines for use of that discretion. Therefore, the Joint Committee objects to Section 9(b) of the Illinois Commerce Commission's General Order 1 under the Illinois Commercial Relocation of Trespassing Vehicles Law because the Commission fails to include the standards and criteria used by the Commission in determining "good cause" for reinstatement of licenses.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Liquor Control Commission

Rule 1(b) of the Liquor Control Commission's "Rules and Regulations Under the Liquor Control Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: December 16, 1982

Specific Objection:

Rule 1(b) defines the word "corporation" as used in the rules. The rule states:

"Corporation" means any corporation, domestic or foreign, qualified to do business in the State of Illinois under "The Business Corporation Act" of Illinois. Satisfactory evidence of such qualification will be furnished the Commission in the form and manner as such Commission shall from time to time designate.

When questioned as to the standards used in determining whether to require proof of incorporation, the Commission explained that it will require a licensee or applicant to produce a certified copy of its certificate of incorporation issued by the Secretary of State whenever a question is raised involving proof of corporate status (i.e., the Commission receives a complaint alleging that the licensee is not a corporation). Unless such a question is raised, the Commission will not require such proof of corporate status. It is ordinarily assumed by the Commission that the applicant or licensee has not misrepresented itself to the Commission, since all applications submitted to the Commission are signed under oath. However, the Commission prefers not to include an explanation of the limited circumstances under which it would require proof of corporate status.

The explanation of the Commission does not, however, clarify the rule. The text of the rule and the explanation of the Commission indicates that the Commission exercises discretion in determining whether or not to require corporations to furnish evidence of their corporate status. The Commission has expressly declined to include in the rule those circumstances under which this information will be requested.

Section 4.02 of the Illinois Administrative Procedure Act mandates that rules must include adequate standards and criteria for the exercise of discretion conferred by rule. Since the Commission refuses to comply with this statutory directive, the Joint Committee objects to Rule 1(b) of the Liquor Control Commission's Rules on the Liquor Control Act.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 1(k) of the Liquor Control Commission's "Rules and Regulations Under the Liquor Control Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: December 16, 1982

Specific Objection:

Under Section 115(e) of the Liquor Control Act (Ill. Rev. Stat. 1979, ch. 43, par. 115(e)), a "railroad license" permits the licensee to sell liquor to its passengers on dining or lounge cars of a train. A separate license must be obtained for each car in which liquor is sold. Section 115(i) of the Act

permits the holder of an "airplane license" to sell liquor to its plane passengers, but also permits the licensee to import alcoholic liquors into this State. A railroad licensee has no corresponding statutory right to import liquors, although like the airplane licensee, it operates in interstate commerce and crosses Illinois boundaries.

As a result of this inconsistency in the Act, the Liquor Control Commission has resorted to the use of a definition of the word "railroad" which would "correct" the statute. The Commission promulgated Rule 1(k) which essentially provides that a railroad license and an airplane license both entitle the licensee to import by defining "railroad" to include commercial airlines. This rule is clearly an attempt to modify the plain language of the statute by rulemaking.

General principles of statutory construction mandate that statutory provisions be given their plain meaning. Section 115(f) of the Liquor Control Act provides:

A railroad license shall permit the operator of any club, buffet, lounge or dining car to sell alcoholic liquor in any club, buffet lounge or dining car operated in this State. A license shall be obtained for each car in which such sales are made.

Section 115(i) defines an airplane license as follows:

An airplane license shall permit the licensee to import alcoholic liquors into this State from any point in the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on an airplane; and provided further, that airplane licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act as applies to importing

distributors. An airplane licensee shall also permit the sale or dispensing of alcoholic liquors on any passenger airplane regularly operated by a common carrier in this State, but shall not permit the sale for resale of any alcoholic liquors to any licensee within this State. A single airplane license shall be required of an airplane company if liquor service is provided on board aircraft in this State. The annual fee for such license shall be as determined in Section 118.

The Liquor Control Commission indicated that Rule 1(k) apparently went into effect prior to the 1959 statutory amendment which added Section 115(i) of the Act. The Commission indicated that the rule made it clear that commercial airplanes could carry and sell liquor in Illinois. Without such clarification, planes would be prohibited from selling alcohol at retail without securing a local retail license, which was impractical (since the "premises" was a moving object). Clarification became necessary due to increased use of airplanes during this time.

The Commission continued that in the present day the definition makes it clear that since airlines and railroads are considered to be interchangeable, the importing privileges afforded an airplane licensee under Section 115(i) are also afforded a railroad licensee. It was indicated that without this rule provision, it would be unclear whether railroads could import liquor into the state on their trains (since Sections 115(c) and 96.16 of the Act would apparently require an importing distributor's license for such activity and since Section 121(e) would prohibit railroads from getting such a license because they sell for use and consumption and are therefore retailers.)

It is apparent from an examination of the two statutory provisions that when the legislature drafted this Act that the terms "airplane" and "railroad" were not deemed synonymous. Therefore, it is clear that the Commission is attempting, by Rule 1(k), to modify the statutory definition of "railroad." Therefore, the Joint Committee objects to the rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 3(3) of the Liquor Control Commission's "Rules and Regulations Under the Liquor Control Act"

Basis of Review: Five Year/Industry and Labor
Business Regulation

Joint Committee Objection: December 16, 1982

Specific Objection:

Rule 3(3) provides that:

Evidence that any person other than the licensee has been convicted of violating a city, village, town or county ordinance or resolutions regulating the sale of alcoholic liquors while upon the licensed premises, shall be prima facie evidence of violation of this rule.

The Commission was asked whether or not this provision would make a licensee responsible for acts of others over which the licensee has no control. The Commission responded that the rule raises a presumption that the licensee permitted the illegal act because it occurred on his premises. This presumption may be overcome, according to the Commission, by a showing that the licensee had no control over the person committing the violation. The Commission asserted that this interpretation of the rule is consistent with court cases which hold that a licensee cannot be held responsible for the acts of others over whom the licensee has no control. Childers v. Illinois Liquor Control Commission, 67 Ill. App.2d 109 (1966).

The Commission is correct, of course, in its assertion that a licensee cannot be held responsible for the acts of others over whom the licensee has no control. It is on that basis that Rule 3(3), in its present form, is defective. The rule, on its face, gives the impression that there is somehow strict liability on the part of the licensee for actions of others on its premises. It is only after discussion with the Commission that we find that the intent of the rule is to create some type of rebuttable presumption.

Even if the rule were clearly phrased to indicate that this is a rebuttable presumption, it still appears objectionable. The Childers case, which the Commission cites in support of this rule, indicates quite plainly that there must be clear evidence of illegal acts on the premises of the licensee which are suffered or permitted by the licensee in order to warrant disciplinary action against the licensee. It is difficult to

understand how the requirement of "clear evidence" required by the Childers case can be satisfied by a presumption. The case does not, even implicitly, authorize the use of a presumption, rebuttable or otherwise.

Therefore, the Joint Committee objects to Rule 3(3) of the Liquor Control Commission's Rules on the Liquor Control Act.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Educational Agencies

State Board of Education

Rule 2.01.19 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.01.19 provides that the "Superintendent may require the school to provide evidence of the business reputation of owners, officials, and administrative staff." The rule does not state what evidence may be required, nor the circumstances under which such evidence may be required.

The State Board has explained that if information received as a part of the application material indicates the need for further investigation, the Superintendent may request evidence of business reputation, although the type of evidence of business reputation was not specified. The type of evidence sought here is important, since the rule is susceptible of interpretation to permit rumor and innuendo to serve as a basis for denying a license.

The Board has stated that no requests have been made during the last two years, and it does not believe it necessary to include the standards for requesting evidence of business reputation nor the specific evidence which would be sought.

The Board's response ignores the requirements of Section 4.02 of the Illinois Administrative Procedure Act, which requires such standards.

In addition, members of the public who are subject to agency regulation should be able to gain a clear understanding of what may be required of them. As the rule currently reads, this may not be possible because of the lack of information. The rules of the Board should be written so that they can be understood, and so that they are not susceptible to abusive use. Because of this lack of clearly defined requirements, and because the rule lacks standards by which discretionary power is exercised, the Joint Committee objects to Rule 2.01.19.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 2.01.17 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.01.17 provides that the "Superintendent may, with written reasons given, require a copy of any evaluation reports received during the year previous to original application or renewal from national, regional, and state accrediting associations . . . and other external evaluators." When the State Board was asked what standards and criteria the Superintendent uses in determining the necessity for obtaining such reports, it replied that the reports of other evaluators may be of value to aid in making approval judgements, if concerns are raised as the result of staff review of school application materials, the site visit, or other forms of communication. The Board has further explained that this rule is established for the exceptional situation, not general practice, and for this reason sees no need to include in the rule standards and criteria for the exercise of this discretion.

Section 4.02 of the IAPA requires that standards by which discretionary power is exercised must be included in rules implementing discretionary power.

Because Rule 2.01.17 does not meet this mandate, the Joint Committee objects to the rule.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 2.01.13 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.01.13 provides that the Superintendent may "require a financial audit of the school by a certified public accountant at the expense of the school and may request upon thirty (30) days' notice interim financial statements as circumstances warrant." When the State Board was asked what standards and criteria are employed in determining the necessity for financial audits, the Board stated that when the required financial statement of an applicant reveals a negative cash position and an unfavorable assets-to-liabilities ratio, or when there is reason to suspect the financial condition reflected in a financial statement is not accurate, an audit may be required.

The Board has stated that no audits were requested in 1979 and only one in 1980, and that it sees no need to amend the rule to include criteria for such infrequent use. However, the decision of whether or not to require a financial audit of a school is an important decision, especially when the expense of such an audit must be borne by the school being audited. Section 4.02 of the IAPA requires that rules which implement discretionary power must include the standards by which such power is exercised. Therefore, the Joint Committee objects to Rule 2.01.13.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 2.01.20(b) of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.01.20(b) requires each school to have a designated assistant supervisor. The rule further provides, "in hardship situations this provision may be waived by determination upon written petition initiated by the school."

The State Board has described a "hardship situation" as one involving an increased financial burden on the school. The decision to waive the requirement is based on judgement of staff in regard to the reason for the request. The rules contain no standards or guidelines to be used by the State Board in making the decision on whether or not to waive the requirement that an assistant supervisor be designated, and the State Board has declined to include such standards, because it does not consider them a necessary part of the rule.

The Joint Committee objects to Rule 2.01.20(b) because the rule fails to fulfill the mandate of Section 4.02 of the IAPA which requires that "each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Rule 1.03 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 1.03 provides that

Prior to the establishment of a private business or vocational school and the issuance of a certificate of approval therefor, no person shall advertise such a school or solicit prospective students for such a school unless such person has applied for and received from the Superintendent authorization to conduct such activity.

Advertising is a form of commercial speech which enjoys certain protections under the First Amendment to the United States Constitution. The rule is overbroad in that it prohibits all advertising, even that which cannot be constitutionally prohibited, unless such advertising is approved by the Board. A state may not completely suppress the dissemination of truthful information about entirely lawful activity, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976). There is no constitutional right to disseminate false or misleading advertisements, F.T.C. v. National Commission on Egg Nutrition, 517 F.2d 485 (7th Cir. 1975). It could, therefore, cure the constitutional infirmities by developing criteria for prohibited advertising that restrict such advertising only to the extent allowed by the constitution. This rule contains no restrictions.

The State Board of Education has stated that since public use of this provision is not a matter of general practice, no specific criteria are established for authorization to conduct these activities, and that requests for such are not numerous enough to include criteria in this rule.

In addition to the need for such criteria to resolve the constitutional infirmity, Section 4.02 of the IAPA requires the inclusion in rules of standards by which discretionary power is to be exercised.

Therefore, the Joint Committee objects to Rule 1.03 because it is unconstitutional, and because it does not meet the mandate of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Article XVIII, Section 118.1 of the State Board of Education's "Rules and Regulations for Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Section 118.1 provides that funds will be allocated in local educational agencies for instructional equipment in a "manner determined to be appropriate by the State Board of Education." The Board has stated that it believes that the inclusion of standards and criteria is unwarranted and that

this broad provision of the rule is necessary in order to assure accomodation of state and federal requirements or significant changes in local school conditions.

It is clear, however, that the rule does not fulfill the IAPA mandate to include the standards by which the agency exercises discretionary power.

The allocation of funds is a highly important responsibility of the Board and has a substantial effect on the local districts involved. While it may not be possible to reflect, with mathematical certainty, the guidelines by which allocations are made, it is not unreasonable to expect the State Board to include some reasonably specific criteria upon which allocation determinations are made.

Therefore, the Joint Committee objects to Article XVIII, Section 118.1 of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.03.8 of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.03.8 provides, in relevant part, that "at least one but not more than three student observers must be in the car during practice driving on public streets."

When asked the specific statutory authority for this requirement, the Board acknowledged that there exists no statutory basis for the provision. However, the Board strongly believes that the requirement is necessary to protect instructors and students from improper behavior or charges of improper behavior. In addition, the Board has pointed out that student observation is an important part of driving instruction, because of limited behind-the-wheel time.

The requirement for student observers may be the cause of some inconvenience, such as the cancellation of practice driving for a student, in the event he or she is the only one

present for class. Recognizing that this is a possibility, the Board contends that the merits of the rule outweigh any inconvenience it might cause.

The fact remains, however, that the Board currently has no authority for such a requirement.

The Joint Committee objects to Rule 2.03.8 because the Board lacks statutory authority to require that at least one but not more than three student observers be present during practice driving on public streets.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Refusal to Modify to Meet Objection

Rule 1.00, Article I of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article I sets forth definitions of terms used in the "Rules and Regulations to Govern the Administration of the Driver Education Act." Rule 1.00 states, "Definitions - The terms used in the following rules are as hereinafter defined unless the context requires a different meaning." Following this statement are seventeen (17) definitions used in driver education.

The State Board of Education was asked if there are any specific instances in which the definitions set forth in Article I do not apply. State Board representatives have indicated they know of no situation in which the terms used do not mean that which the definitions indicate. They have acknowledged that the phrase "unless the context requires a different meaning" could be excluded, but indicated that they prefer to retain it to cover any possible development and to avoid the possibility of a subsequent revision which would require their putting the phrase back in the rule.

However, it would seem appropriate to amend the rule to include a clearer term if, in the future, there was a situation in which the term used had a meaning different from the definition given. For the present, the phrase "unless the context requires a different meaning" is unnecessary and may

be misleading. Its inclusion makes the rule vague and perhaps confusing to members of the public who are subject to the rules governing driver education. It is possible, because of the allowance for arbitrary interpretation, that a school administrator who assumes from a reading of the rules that his program is in full compliance could find that in certain instances one or more terms are not interpreted as defined, and that his program is, therefore not in compliance.

Members of the public who are subject to agency regulation should be able to gain a clear understanding of their obligation from reading the agency's rules. As this rule currently reads, this may not be possible, because of the inclusion of the unnecessary and confusing language cited.

Section 7.04 of the IAPA provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." It appears that the mandate of the Act in regard to clarity is not fulfilled in Rule 1.00, and for this reason the Joint Committee objects to the rule.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.03.2(c) of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.03.2 requires that when circumstances necessitate a student's receiving laboratory instruction from a school other than that from which he received classroom instruction, certain documents are required to be filed. The rules lists situations which are likely to necessitate instruction from more than one school, including the provision in Rule 2.03.2(c) as follows:

A student changes residence from
another state to Illinois after
completion of a comparable course
and reciprocity is established.

The State Board was asked if it has rules or policies regarding reciprocity. State Board representatives stated that its policy

for acceptance by reciprocity is that the course must meet Illinois standards of thirty (30) clock hours of classroom instruction and six (6) clock hours of practice driving. This policy is not included in the rule.

Section 3.09 of the IAPA defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy. . . ." The policy stated by the Board representatives is clearly a rule as the IAPA defines that term. It appears that the existing Rule 2.03.2 is not in compliance with requirements of the Act, because it fails to state the policy of the Board in regard to reciprocity.

Although the State Board has cited ch. 95½, par. 1-103 as statutory authority for establishment of reciprocity, it has not agreed to the necessity for including the Board's policy in its rules.

It is doubtful that affected persons would be able to understand, from reading the rule as it is now written, what is required by the State Board for establishment of reciprocity. This information should be readily accessible in its rules, for the benefit of persons who need to know the Board's policy. Therefore, the Joint Committee objects to Rule 2.03.2(c).

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.03.9 of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.03.9 provides, in relevant part:

A ratio of two hours of multiple-car instruction may be provided in lieu of one hour of practice driving in a dual-control car. The number of hours allowable will depend on the adequacy of the driving range

facility and will be determined on a
individual basis by the
Superintendent of Public
Instruction. . . . (Emphasis
added.)

No measure for the determination of adequacy is included in the rule. When the State Board was asked if it had any standards and criteria which govern the Superintendent's discretion in determining adequacy of the driving range facility, the Board stated that, initially, to qualify for substitution of multiple-car instruction in lieu of practice driving, each multiple-car facility was reviewed as to instructional facilities and lesson content before approval for use was given. The Board's general policy has been that each facility was to be 80,000 square feet in area. However, State Board representatives stated further, in conference, that general practice has been to take a "reasonable" approach to approval, based on effort and size of the school district. The 80,000 square feet general rule cited by them is not enforced across the board, especially in the case of very small districts, according to Board representatives. They do not believe Board discretion should be restricted by setting forth standards in the rule.

Section 4.02 of the IAPA requires that standards by which an agency shall exercise discretionary power are to be included in the rule. Clearly, this mandate is not fulfilled in Rule 2.03.9, which contains no standards or criteria for the exercise of broad discretionary power. Further, without the inclusion of guidelines employed by the Board, the rule does not accurately reflect the Board's policy. The Joint Committee, therefore, objects to Rule 2.03.9 because it lacks standards and criteria for determining the adequacy of driving range facilities, and because it does not accurately reflect the policy of the Board.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.03.11 of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.03, "Program Organization," states that approved driver education courses must be organized according to the standards established by the Superintendent of Public Instruction. Under this general provision, Rule 2.03.11 provides:

Laboratory instruction which employs a combination of all three methods may be authorized on an annual basis.

The rule refers to three methods of laboratory instruction employed in driver education: practice driving, multiple-car instruction, and driving simulation.

The State Board was asked what standards and criteria are used for annual authorization of laboratory instruction utilizing a combination of the three methods of driver education. The Board referred the Joint Committee to the two preceding rules, which establish standards for approval of a combination of two driving instruction methods. These two rules do not, however, serve to clearly establish standards and criteria for Rule 2.03.11, because they contain no reference to laboratory instruction which employs a combination of three methods. No hourly minimums or ratios are stipulated for a course employing three instructional methods. Thus, even if this rule were to refer to the two previous rules, it would remain incomplete and subject to discretionary power of the Board. Standards are required by Section 4.02 of the IAPA.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power, is not fulfilled in Rule 2.03.11. For this reason, the Joint Committee objects to the rule.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 4.02.6 of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 4.02.6 provides that driver education instructors with less than the minimum academic requirements "may qualify for temporary approval from the Superintendent of Public Instruction." The State Board was asked on what basis and for what period of time temporary approval is granted. The Board replied that since 1975, temporary approvals have not been granted for the teaching of driver education, and that the agency would consider deletion of this rule. In conference, however, the Board indicated it is undecided about whether to delete the rule or retain it, in order to cover all contingencies.

The rule establishes a provision for temporary approvals which is no longer the Board's policy to grant. Because as the Board has stated, granting of temporary approvals has not been in practice for more than six (6) years, the rule appears to be obsolete. It implies to the public a policy which no longer exists and, therefore, appears misleading.

Section 7.08 of the IAPA provides that one of the functions of the Joint Committee is an examination of rules with the purpose of eliminating or phasing out of outdated rules. In view of the fact that Rule 4.02.6 is no longer an accurate statement of agency policy, it is doubtful that affected persons would gain from it a proper understanding of Board practice regarding temporary approval for driver education instructions.

In addition, the rule as it is currently written, includes no standards or guidelines by which the Board will judge applications for temporary approval. Section 4.02 of the IAPA requires standards for the exercise of that discretion. Because of the above reasons, the Joint Committee objects to Rule 4.02.6

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Repealed to Meet Objection

Article V of the State Board of Education's "Rules and Regulations to Govern the Administration of the Driver Education Act"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article V of the Rules and Regulations to Govern the Administration of the Driver Education Act is entitled

"Commercial Schools," and it establishes standards for professional driver training schools. Rule 5.00 states:

Professional (Commercial) Driver
Training Schools.

Unless specifically stated to the contrary in this article, all administrative rules appearing in Article I, II, III, and IV as of March 1, 1972, also apply to professional driver training schools.

Rules 5.01 states:

Each professional driver training school which desires to offer instruction to those under the age of 18 must be certified by the Office of the Superintendent of Public Instruction before such instruction can be offered or advertised.

Statutory authority cited in the certification of rules for this set of rules is Section 27-23 and 27-24 through 27-24.8 of ch. 122, The School Code. The statute cited, however, makes no reference to commercial driving schools.

When asked for specific statutory authority for the rules in Article V, dealing with the regulation of commercial driver training schools, the Board replied that the "specifics for the regulation of public schools are delineated in the School Code of Illinois" and that "the requirements for commercial schools are consistent with those rules established by the Secretary of State which issues the license for their operation within Illinois."

In conference, the Board cited as additional statutory authority for their rules regarding commercial driving schools, certain sections of the Motor Vehicle Code. Specifically cited was ch. 95½, par. 1-103, which defines "approved driver education course" as

(b) any course of driver education offered by a school licensed to give driver education instructions under this Act which meets at least the minimum education requirements of the "Driver Education Act", as now or hereafter amended, and is

approved by the Superintendent of
Public Instruction.

It should be noted, however, that this statute refers only to the Superintendent's approval of a course, not of the school in its entirety.

In further discussion of statutory authority in regard to commercial driver training schools, the Board cited also ch. 95½, par. 6-411, "qualification of driver training instructors" which states

If a driver training school classroom instructor teaches an approved driver education course to students under 18 years of age, he shall furnish to the Secretary of State a certificate issued by the Superintendent of Public Instruction that the said instructor is qualified and meets the minimum educational standards for teaching driver education courses in the local public or parochial school systems.

This statute refers to qualifications of instructors in specific limited circumstances and does not apply to all driver training instructors in commercial schools, or to the schools themselves.

Rules in regard to commercial driving schools promulgated by the State Board of Education are not limited to courses or instructors for students under 18 years of age. The rules set forth standards for classroom space and equipment, instructional equipment, in-car instructors, and school records. A five-man advisory committee is established by Rule 5.07, for which there is no statutory basis. This committee, composed of owners or managers of driving schools, is appointed by the Superintendent and has among its duties and powers the recommending of approval or disapproval of schools applying for certification. Procedures for investigating complaints regarding the conduct of certified commercial schools and conducting hearings are set forth in Rules 5.08 and 5.09.

General qualification for driver training schools are found in the Motor Vehicle Code (III. Rev. Stat., ch. 95½, par. 6-402). Absent from that statute is any mention of certification by the State Board of Education. Only the Secretary of State is empowered by statute to examine and license driver training schools and their instructors, to assess licensing fees, and to set standards for facilities. Paragraph 6-419 of chapter 95½ authorizes the Secretary of State to prescribe by rule "standards for the eligibility, conduct and operation of driver

training schools, and instructors" and to adopt other reasonable rules and regulations necessary to carry out the provisions of the Act.

Rules promulgated by the Secretary of State under the Motor Vehicle Code (Ill. Rev. Stat., 1979, ch. 95½, par 6-419) address essentially those same subjects covered in State Board of Education rules for commercial driving schools: classroom facilities, licenses, course of instruction, qualifications of instructors, revocation of license, and hearings regarding cancellation of license. Problems of overlap are compounded by conflicting requirements within the two sets of rules.

Nowhere in the statutes pertaining to the Driver Education Act or Commercial Driver Training Schools is there the requirement or authorization for certification of private driving schools by the State Board of Education. Statutory authority for licensing, as well as for rulemaking and enforcement in regard to commercial driver training schools is vested in the Secretary of State. Because of this, rules regarding these schools promulgated by the State Board of Education appear to be unauthorized and unwarranted.

Therefore, the Joint Committee objects to Article V, Commercial Schools, because the Board lacks statutory authority to promulgate these rules.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rules and Regulations in Relation to Private Business and Vocational Schools

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Section 160.620 of the Secretary of State's "Rules on Rules" provides:

Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to repeat or paraphrase statutory language in a rule, it shall be typewritten in italic or distinguishing type.

The "Rules and Regulations in Relation to Private Business and Vocational Schools" are in a large part repetition of the statutes they are intended to implement. Wording in well over half of the rules in the set is taken directly from the statutes, without further amplification for the benefit of those subject to regulation by the State Board of Education.

The issue of the use of statutory language was raised repeatedly in questions posed by the Joint committee staff. In all cases, the State Board stated its belief in the necessity for repeating statutory language and its preference for retaining such language in rules. The Board readily agreed to place statutory language in distinguishing type, as required by the Secretary of State's "Rules on Rules." However, this provision is clearly intended to be employed in those exceptional instances where statutory language is absolutely required for the public's understanding of its rights and obligations under the law. It does not appear that the provision for the use of statutory language could be applied with propriety to the bulk of rules in one set.

Paragraph 150 of the Act relating to business and vocational schools charges the Board to make and enforce rules for the administration of the Act. This charge has been only partially carried out by the Board, which has in many instances promulgated statutory language as rules. It seems evident that the legislature intended that there be two complementary documents, statutes and rules, to enhance public understanding in regard to business and vocational schools. In order to fulfill this legislative intent, it would seem appropriate for the State Board of Education to amend its current practice regarding the use of statutory language in rules. Therefore, the Joint Committee objects to the "Rules and Regulations in Relation to Private Business and Vocational Schools."

Date Agency Response Received: January 26, 1983

Nature of Response: Modified to Meet Objection

Rule 2.02(2) of the State Board of Education's "Rules and Regulations in Relation to Private Business and vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.02, which is taken verbatim from the statute, provides a list of commitments that must be contained in schools' applications for certificates of approval. Rule 2.02(2) requires applicants:

To provide a surety company bond, written by a company authorized to do business in this State, for the protection of the contractual rights of students in an amount not to exceed \$50,000 except under exceptional circumstances upon the order of the Superintendent. In lieu of bond the applicant may deposit with the State Treasurer the sum of \$50,000 in cash or securities as may be approved by the Superintendent.

The State Board has explained an "exceptional circumstance" which would require a bond in excess of \$50,000 would include a situation in which there is an extremely poor assets-to-liabilities ratio coupled with prepaid tuition in excess of the amount of the bond. The Board cites as example a school with assets-to-liabilities ration of .8 to 1, and prepaid tuition of \$75,000; such a school would be required to have a bond of at least \$75,000. The State Board has indicated, however, that it does not consider it necessary to define "exceptional circumstances" in the rule, or to list its standards and guidelines for determining when "exceptional circumstances" exist. Section 4.02 of the Illinois Administrative Procedure Act requires that each rule which implements a discretionary power include the standards by which the discretion will be exercised. Clearly, this rule indicates discretion in determining whether additional bonding requirements are to be imposed.

In addition, Section 7.04 of the IAPA provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." It appears that the mandate of the Act in regard to clarity is not fulfilled in Rule 3.03(3) since the Board's policy, which as apparently been explained clearly in conference, is not included in the rule.

For those reasons the Joint Committee objects to the rule.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.11.02 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.11.02 provides:

The school may establish policies and procedures for students to demonstrate competency and proficiency to take advanced courses. Such policies and procedures shall be filed with the Superintendent.

Wording of the rule indicates that the establishment of policies and procedures for student demonstration of competency and proficiency is optional. However, in discussing the rule, State Board representatives stated that the Board "requires that policies be filed so that they can be reviewed and to determine that the policy has been developed." The practice of requiring that policies be filed and, by implication, that they first be developed is not clearly reflected in the rule, because of the phrase "may establish policies and procedures."

Further, it appears that approval or disapproval of such school policies is practiced by the Board which, according to its representatives, "reviews all school policies to determine reasonable accomplishment of the objective for which the policy is required." In this case, it is necessary that the rule include standards for Board approval of policies and procedures submitted for review.

State Board representatives have stated that they are unable to make any commitment to amend the rule in order to comply with the mandates for accuracy in regard to current practice and for standards for the exercise of discretionary power. Therefore, the Joint Committee objects to Rule 2.11.02.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.04 of the State Board of Education's "Rules and Regulations to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.04 prohibits the commercial employment of students "except as may be determined by the Superintendent as reasonably necessary to gain practical experience." The State Board was asked how it determines a "reasonable" level of commercial employment, and whether or not there is a maximum number of hours a student may be employed. According to the Board, the Superintendent considers "reasonableness" on a case by case basis, considering a ration of class hours of theory and training to employment experience. These criteria considered in making decisions regarding student employment are not included in the rule. Neither are maximum hour limits prescribed, although the rule implies the existence of hourly limits for acceptability.

The Board has declined to include standards and criteria, although the IAPA requires the standards be included in rules which implement discretionary power. Because of the failure of Rule 2.04 to include such standards, the Joint Committee objects to the rule.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 2.11(14) of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 2.11(14), taken directly from the statute, lists as a cause for which the Superintendent may refuse to issue, renew or may revoke certificates or licenses:

Demonstrating unworthiness or
incompetency to conduct a business
or vocational school in any manner

not calculated to safeguard the interests of the public.

The Rules includes no standards or criteria to be used in administering this provision nor for defining "unworthiness" or "incompetency." The rule gives no meaningful guidelines to indicate to those licensed what actions will be cause for revocation of the license. In view of the serious consequences of such an action -- especially to those who have already invested substantial sums of money, and whose livelihood depends on the operation of such schools -- it seems that fairness requires that the State Board indicate, with a great deal more specificity, what it considers "unworthiness," "incompetency" and "actions not calculated to safeguard the public interest."

When questioned concerning this provision, the State Board stated that it has not been called upon to invoke this provision of the requirement and considers the rule adequate as it is written. However, the Board explained that, if called upon, circumstances such as those identified in Rule 2.11 as cause for refusal to issue, renew or to revoke certificates or permits would provide the basis for any such decision. If the causes listed are those which would apply to this rule, the provision is redundant, and should be deleted. If it is retained, the rule should be amended to include the specific standards and criteria to be employed in its administration, as well as more clear definitions of causes for refusal to issue, renew, or to revoke licenses.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 3.02 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 3.02, taken directly from the Act, provides

Whenever required by the Superintendent, each solicitor shall provide a surety company bond for the protection of the contractual

rights of students in the amount of \$2,000, except under exceptional circumstances up to \$10,000, upon the order of the Superintendent. The surety company bond shall be written by a company authorized to do business in this State.

The rule does not specify circumstances under which a bond in the amount of \$2,000 would be required. Nor does the rule specify those exceptional circumstances under which a bond in an amount of more than \$2,000 would be required.

The State Board has stated that under current practice each solicitor is required by the Board to be covered by a bond. This being the case, the rule should so state, rather than indicate that the Superintendent requires a bond only when he considers it warranted.

The State Board has stated in conference, that the exceptional circumstances under which a higher bond might be required of a solicitor could be an unfavorable assets-to-liability ratio. While this provision of the rules has not been used, in the event that it is retained, the inclusion of the standards and criteria to be employed on the occasion of its use is required.

For the above reasons, the Joint Committee objects to Rule 3.02.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 4.03.06 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 4.03.06 provides that tuition for students attending a particular vocational school is to be uniform "except for approved discounts which may be given for quantity or group enrollment" The rule includes no standards for approval of discounts. The State Board has explained that it approves any discount plan if, after review the Board determines that the plan is available to all students. This

standard should be embodied in the rule, in compliance with the mandate of Section 4.02 of the IAPA. The Board does not agree with the necessity for its inclusion, however.

Because the rule does not meet the mandate of the IAPA to include standards for the exercise of discretionary power, the Joint Committee objects to Rule 4.03.06.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 4.05.03 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 4.05 outlines minimum standards for program approval. Rule 4.05.03 states:

An in-residence school shall provide the Superintendent a course outline with the specific clock hours required for the completion of each unit of instruction. Its program shall be organized according to accepted principles of in-residence instruction.

The State Board was asked what specific "accepted principles" apply to this rule, and the Board indicated that principles of curriculum construction found in textbooks on curriculum design are accepted. Elements of course construction would include such things as structure, scope, sequence, units, and objectives. It appears that these elements may constitute the standards upon which the course outlines are approved, although they are somewhat inadequate standards because they do not give any specific information as to how the listed criteria are to be applied.

Because these factors constitute the standards and criteria on which acceptance is based, they are required by the IAPA to be included in the rule which implements discretionary power. The Board believes the current wording of the rule is

adequate for informing those persons subject to these regulations. For this reason, the Joint Committee objects to Rule 4.05.03.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rule 4.05.10 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1983

Specific Objection:

Rule 4.05.10 provides that "the Superintendent may require the school to establish performance objectives for specific courses of study," (emphasis added) but does not stipulate circumstances under which the Board requires the establishment of performance objectives. When asked under what circumstances a school might be required to do so, the Board stated that it suggests, but does not require, that performance objectives be established. If this is the general policy of the Board, it should be so stated in the rules. Rule 4.05.10, as it is currently written, indicates that establishment of performance objectives may be required, rather than merely suggested. The Board prefers to retain the current wording of the rule in order to cover any situation indicating the need to require, rather than advise, the establishment of performance objectives.

If the rule is to be retained with the current term "may require," the rule must then include standards by which the power is to be exercised. As presently constructed, Rule 4.05.10 does not fulfill the mandate of the IAPA, and therefore, the Joint Committee objects to Rule 4.05.10.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Repealed to Meet Objection

Rule 4.06.08 of the State Board of Education's "Rules and Regulations in Relation to Private Business and Vocational Schools"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 4.06.08 provides that "the Superintendent may request the school to provide its tables used in calculating student refunds."

The Board was asked under what specific circumstances such information is requested and whether or not tables are subject to approval. The Board replied that it actually requires that each school file, with its annual application, a copy of its table for computing student refunds. The Board further indicated that these tables must meet the criteria set forth in Rules 4.06.09, 4.06.10, 4.06.11, and 4.06.12, which directly follow the above rule.

Rule 4.06.08 appears misleading in that it provides that tables used in calculating refunds "may be required," when in fact, these are routinely required. The rule should clearly state the policy of the Board, which is that such tables are required to be filed.

One of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." Among the criteria for review is the question of whether or not rules are accurate in regard to agency policy. It appears that the mandate of the IAPA in regard to clarity and accuracy is not fulfilled in Rule 4.06.08. Therefore, the Joint Committee objects to the rule.

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Rules and Regulations for the Administration of Vocational Education Programs

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Throughout the Rules and Regulations for the Administration of Vocational Education Programs, references are made to various federal Acts with which, as the rules state, applicants and their programs must comply.

Article I, Sections 101.3 and 101.5(8) reference the federal Vocational Education Act;

Article III, Sections 103.6(1), 103.6(5), and 103.6(6) reference the Vocational Education Act;

Article III, Section 103.6(6) references the Civil Rights Act of 1964;

Article III, Section 103.6(7) references the Elementary and Secondary Education Act of 1965;

Article III, Section 103.6(8) references the Education of the Handicapped Act;

Article III, Section 103.6(9) references the Elementary and Secondary Education Act;

Article III, Section 103.6(11) references the Rehabilitation Act of 1973;

Section IX, Section 109.5 references the Education of the Handicapped Act;

Article IX, Section 109.7 references the Comprehensive Employment and Training Act;

Article XIV, Section 114.1(2) references the Vocational Education Act;

Article XXII, Section 122.5(5) references the Civil Rights Act of 1964.

In only one of these instances (Article III, Section 103.11) is the citation to the United States Code for the Act in question provided. The State Board was asked to provide Code citations for each. The Board replied that it considers the citations by title as they appear to be adequate for those who must adhere to the rules. It has declined to provide in the rules the United States Code citations although inclusion of this information would be of considerable assistance to public understanding of the rules. One should not need to be an attorney to be able to identify and locate federal acts with which the rules require applicants and programs to comply.

One of the functions of the Joint Committee is to promote public understanding of agency rules. Failure of the Board to provide citations to the United States Code for federal acts referenced in its rules impedes, rather than promotes,

understanding on the part of the public. Therefore, the Joint Committee objects to the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Article II, Section 102.5 of the State Board of Education's "Rules and Regulations for the Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article II, Section 102.5, "Allocation of funds by Formula Reimbursement," provides that vocational education funds allocated by the State Board of Education to support programs of local educational agencies will be allocated on the basis of a general distribution formula. The final paragraph of the rule which deals with claims of educational institutions for formula reimbursement, states that "such claims will be determined as of the claim date and are subject to a percentage proration of available funds by funding source, by program purpose, or in such other manner consistent with federal or state law as may be deemed necessary by the State Board of Education." (Emphasis added.)

The Board was asked what other methods, if any, have been deemed necessary. The Board replied that no additional methods have been needed, but that the inclusion of the phrase "or in such other manner consistent with federal and state law as may be deemed necessary by the State Board of Education" is necessary to permit the State Board to comply with federal requirements which change frequently as new interpretations of the federal regulations are issued.

In the event that changes in federal regulations require change in the state rules under conditions which preclude compliance with the general rulemaking requirements of the IAPA, the Board has the option of using peremptory rulemaking as provided by Section 5.03 of the IAPA. In the event federal regulations require immediate changes that do not come within Section 5.03, the Board can use the emergency rulemaking provisions of Section 5.02. These provisions makes it unnecessary, as well as improper, to include phrases meant to permit compliance with changing federal requirements.

Moreover, it seems apparent that the quoted phrase does not restrict methods of claim determination to that required by federal law, since there is an obvious discretionary power to make determinations which are consistent with current federal law. To the extent that such methods are employed, they should be set forth in the rule.

As to that portion of the phrase which refers to state law, it seems apparent that any change in state law which would affect these rules would be a matter about which the Board would be well informed, and thus able to reflect appropriately in the rules.

In addition, the inclusion of the phrase, "as may be deemed necessary" implies the existence of methods or criteria other than those specified in the rule. However, no other such method of claim determination is employed currently, according to State Board of Education representatives. Thus the rule fails to accurately reflect agency practice.

For these reasons, the Joint Committee objects to Article II, Section 102.5 of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Article III, Section 103.6(4) of the State Board of Education's "Rules and Regulations for the Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article III, Section 103.6(4) requires that "annual applications of a local education agency shall contain the following assurances . . . (4) that the qualifications of staff responsible for carrying out the proposed program meet the minimum requirements of the State Board of Education and other applicable minimum qualifications and requirements established by State law and by regulatory agencies." The rule contains no citations to applicable statutes or rules stating qualifications which apply, and thus it fails to provide those subject to the rule with necessary information.

When the State Board was asked to be more specific as to what "other applicable qualifications" apply, the Board stated that

minimum qualifications for instructional staff in certain programs are set forth in regulations promulgated by specific agencies other than the State Board of Education, and that these need not be included in Board of Education rules. However, such a response ignores the fact that it is the Board which possesses the expertise to know what other statutes and regulations are applicable. If the Board, in fact, monitors compliance with this other requirement, as the rule would seem to mandate, the Board must know what other statutes and rules apply.

One of the functions of the Joint Committee is to promote public understanding of agency rules. Failure of the Board to specify what minimum qualifications must be attested to impedes, rather than promotes, public understanding of the rules.

Because necessary information is absent from the rule, the Joint Committee objects to Article III, Section 103.6(4) of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Article IV, Section 104.3 of the State Board of Education's "Rules and Regulations for Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article IV, Section 104.3 provides in the second paragraph:

Applications for reimbursement shall be itemized in such detail and shall be supported by such documentary evidence or information as the State Board of Education may require in each specific instance of funding to assure proper accounting of public funding. (Emphasis added.)

The rule fails to specify documentary evidence, or examples of types of evidence which may be required and, therefore, does

not provide those subject to the rule with the information necessary to fulfill requirements. Nor does the rule provide any meaningful standards used by the Board to determine the type of documentary evidence which it may require.

State Board of Education representatives have stated that it is not feasible to list in this regulation all of the conceivable types of documents which would suffice for this purpose. While it may not be able to provide an all inclusive list, it does not appear unreasonable to require a representative list of the types of evidence and information, along with standards for determining other types of evidence which may be required.

It is clear that the rule, as written, implements a discretionary power. Section 4.02 of the IAPA requires, as a minimum, that standards on the exercise of this discretion be included in the rule.

Therefore, the Joint Committee objects to Article IV, Section 104.3 of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Article IV, Section 104.6 of the State Board of Education's "Rules and Regulations for Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Rule 104.6 provides that fiscal audits will be conducted on local educational agencies upon "(1) recommendations for such audits by State Board of Education staff, and (2) requests for such audits by the local educational agency." When the State Board was asked what standards were used for the granting of requests for audits, the Board stated that all requests for audits will be honored "as time permits, without regard to standards or criteria," and that requests for special audits are too rarely received to warrant standards in regard to them. It is the Board's belief that the rule is adequate as it is currently written.

The Board's response ignores the impact which an audit may have on a local agency. While it is hoped that such audits

would be recommended by Board staff only upon reasonable grounds, the unrestricted discretion reflected in the present rule allows for the arbitrary imposition of the audit provision, and allows the audit to be used as a tool of harassment.

Because the recommendation for audits by State Board staff clearly indicates the exercise of discretionary power, standards by which the power is exercised must by law be included in the rule. Section 4.02 of the IAPA requires that such standards be included. Article IV, Section 104.6 does not fulfill the IAPA mandate in this regard, and therefore, the Joint Committee objects to Article IV, Section 104.6 of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

Article V, Section 105.1 of the State Board of Education's "Rules and Regulations for Administration of Vocational Education Programs"

Basis of Review: Five Year/Education and Cultural Resources:
Vocational and Professional Education

Joint Committee Objection: October 13, 1982

Specific Objection:

Article V, Section 105.1 states:

Local educational agencies receiving funds allocated by the State Board of Education for support of vocational education programs and activities shall submit such fiscal and statistical reports as may be required by the State Board of Education.

The State Board was asked what specific reports may be required, and under what circumstances. The Board explained that reports referenced in the regulation are those required for the Federal Vocational Education Data System and are subject to change on an annual basis. These reports are required as a condition of federal funding.

The rule as it is written, does not reflect the policy as stated by the Board, and in that respect fails to include relevant agency policy.

Moreover, the rule, as written, allows unlimited agency discretion in requiring fiscal and statistical reports, without guidelines for the exercise of that discretion. Since the Board has indicated that it exercises no discretion, but requires only federally required reports, the rule should so indicate.

Because it appears that the reports that are required federally change only annually, it does not seem unreasonable to incorporate the federal requirements, by reference if possible under Section 6.01(6) of the IAPA, or directly, into these rules.

The rule fails to fully inform those subject to its prescriptions, in that it does not identify reports which will be required of them. On this basis, the Joint Committee objects to Article V, Section 105.1 of the "Rules and Regulations for the Administration of Vocational Education Programs."

Date Agency Response Received: January 26, 1983

Nature of Agency Response: Modified to Meet Objection

STATEMENTS OF RECOMMENDATION FROM REVIEW OF EXISTING RULES

Code Departments

Fee Structure for Falconry Licensing

Joint Committee Recommendation: December 16, 1982

Specific Recommendation:

Section 2.4 of the Wildlife Code of 1971 defines a "bird of prey" as all species of owls, falcons, hawks, kites, harriers, ospreys, and eagles. It also provides that it is illegal to take or possess a bird of prey without first obtaining a license from the Department. All applicants for such a license must be 18 years of age or older. The initial fee for a falconry license is \$25.00, and the renewal fee is \$10.00.

In response to Joint Committee questions, the Department stated that revenues generated through issuance of both new and renewal licenses amounted to approximately \$875 in 1980 and \$905 in 1981. The Department estimates that it costs approximately \$6,500 per year to regulate the falconry program.

In the last two years, revenues generated through fees have amounted to less than 15% of the costs of administration. Section 2.4 of the Act was last amended in 1979 when the renewal fee was raised from \$5.00 to \$10.00. However, even this recent fee increase has done little to offset the estimated costs of regulating the program. It may be fiscally more responsible for license holders and candidates to bear a larger share of the administrative costs of the program, particularly when individual fees are at the relatively low levels of \$10.00 and \$25.00. It appears appropriate to re-examine and update the fee structures set forth in this section of the Act.

It is recommended, therefore, that the Department of Conservation review its fee structure in order to determine whether fees should be raised, and if so, to develop and introduce legislation to implement such increases.

Date Agency Response Received: January 5, 1983

Nature of Agency Response: Agreed to Implement Recommendation

Fee Structure for Field Trial Permits

Joint Committee Recommendation: December 16, 1982

Specific Recommendation:

Section 2.34 of the Wildlife Code of 1971 states that no field trial may be held without a permit. The Department of Conservation is authorized to designate dog training areas and to grant permits for all field trials. Applications for field trials must contain the date, location of the grounds of the trial, and the written consent of the landowner. All fees and regulations are to be set by administrative order.

Part 910.20(b) of the Department's rules governing Field Trials Held on Properties Under the Jurisdiction of the Department of Conservation (17 Ill. Adm. Code Part 910.20(b)) provides the permit and fee structure for field trials held on Department properties and states:

- | | |
|---|--|
| Fees - Illinois Department of Conservation Area | |
| 1) Pointing Breed Field Trials - | \$25.00 per day or part of day \$50.00 maximum per field trial |
| 2) All other Field Trials - | \$12.50 per day or part |

of day \$25.00 maximum
per field trial.

Part 930.20(c) of the Department's rules governing Field Trials on Private Lands (17 Ill. Adm. Code Part 930.20(c)) provides the permit and fee structure for field trials held on private lands and states:

Fees - Private Land Field Trial
Permits

- 1) Pointing Breed Trials which receive game birds from the Department - \$20.00 per day or part of day \$40.00 maximum per field trial.
- 2) All other Field Trials - No fee

In response to Joint Committee questions, the Department stated that revenues generated through the administration of the rules totaled \$8,770 in the last two calendar years. The Department stated that in FY 1980 alone, \$76,300 was programmatically coded to the Field Trial Program.

In the last two years, revenues generated through fees have amounted to less than 10% of the costs of administration. Field trial competition in Illinois has grown in great proportion in the last several years. To compete for the \$2,000 winner's purse in the Illinois Open, a considerable investment is required. A promising dog can sell for as much as \$2,000, and kennel boarding of a dog averages \$200 a month. It costs \$100 to enter a dog in the Illinois Open. Thus, while the number of field trials have risen in Illinois in recent years, the fee structure has not kept pace with the growth of the sport. It appears appropriate to re-examine and update the fee structures set forth in the administrative orders.

It is recommended, therefore, that the Department review its fee structure in order to determine whether fees should be raised to offset the cost of operating the Field Trial Program.

Date Agency Response Received: January 5, 1983

Nature of Agency Response: Agreed to Implement Recommendation

Suspension or Revocation of Commercial Fishing Licenses

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

The Department of Conservation issues commercial fishing licences and contracts pursuant to Sections 5.8 and 5.9 of the Illinois Fish Code (Ill. Rev. Stat., 1979, ch. 56, pars. 5.8 and 5.9). Section 850.80 of the Department's "Commercial Fishing in Lake Michigan" provides for the suspension and revocation of these licenses. Section 850.80, in its entirety, states that

In accordance with Section 5.19 of the Fish Code (Ill. Rev. Stat. 1979, ch. 56, par. 5.19), a lack of capacity to fulfill and/or failure to comply with all provisions of the Lake Michigan commercial fishing license, Fish Code of Illinois pertaining to commercial fishing on Lake Michigan, and this part will result in suspension or revocation of the Lake Michigan commercial fishing license. Suspension of Lake Michigan Commercial fishing license will be for a period of not less than one year.

Section 5.19 of the Fish Code (Ill. Rev. Stat. 1979, ch. 56, par. 5.19) simply authorizes the Department to revoke or refuse to issue licenses to persons who violate the Code or the rules, or who use misrepresentation in obtaining a license. It provides no specific procedures governing such revocation or refusals. These things have been left to the Department to determine. Unfortunately, Section 850.80 is the only provision in the Department's rules which addresses this subject and it is nearly as general as the statutory provision from which it emanates.

Section 16(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1979, ch. 127, par. 1016(c)) requires that "(n)o agency shall revoke, suspend, annul, withdraw, amend materially or refuse to review any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases." Section 850.80 does not explain the procedures involved with making suspensions or revocations, the rights of contract holders to hearings, or the procedures governing such hearings. In addition, Section 850.80 does not adequately explain the circumstances under which a suspension or a revocation will be imposed. It states only that failure to comply with the Fish Code or Section 850 will result in "suspension or revocation...." No indication is given of when either of these actions is taken.

Because of the impact that these suspensions and revocations have on individuals affected by Section 850, the Department should explain as fully as possible in its rules the rights of those individuals and the procedures involved with regard to such actions. Some of the confusion surrounding suspensions and revocations has been corrected by recent amendments to these rules; but the problems addressed by this recommendation still remain. At the very least, the Department should also explain the procedures by which suspension and revocations are made; the rights of contract holders to notice and hearings in relation to such actions; the procedures governing such hearings; and the criteria by which it decides to impose either suspensions or revocations. Therefore, the Joint Committee recommends that the Department amend Section 850.80 to include these things.

Date Agency Response Received: January 5, 1983

Nature of Agency Response: Agreed to Implement Recommendation

Department of Corrections
School District #428

Management and Government of the Educational Programs of the
Department of Corrections

Joint Committee Recommendation:

Specific Recommendation

The Act creating the Department of Corrections School District mandates promulgation and enforcement of all necessary rules for the district schools. Among the rules required in the statute are rules for the management and government of the schools of the district, rules for the admission of pupils into classes, regulations for planning, operation and evaluation of the education program, and rules as to enrollment and attendance.

It appears that there exists widely implemented Department program policies not embodied in rules. In response to Joint Committee questions regarding whether or not rules had been promulgated pursuant to certain statutory mandates, the Department produced a copy of its current policy. This document, The Illinois Program for Evaluation, Supervision and Recognition of Corrections School District 428, dated February 22, 1980, embodies policies adopted by the Board. As stated in its forward, the Illinois Program provides a framework for meeting certification requirements of the State Board of Education.

The document contains detailed directives for carrying out the educational programs of the district, under chapter titles "I Recognition and Supervision," "II School Governance," "III School District Administration," and IV the Instructional Program."

The Illinois Program for Evaluation, Supervision, and Recognition of Corrections School District 428 has not been filed with the Secretary of State, in accordance with Section 7.04 of the Illinois Administrative Procedure Act, although it constitutes the policy under which the school district functions. Reference is made in the body of the document to "these rules and regulations."

Department of Corrections representatives agreed to the promulgation of the The Program. However, there are in the document instances of divergence from statutory provisions which could make it unacceptable in its present form.

In addition to The Illinois Program for Evaluation, Supervision, and Recognition of Corrections School District 428, there are in general use in correctional facilities other policy documents which are not on file with the Secretary of State. Department representatives indicated that each institution has its own disciplinary rules and procedures embodied in handbooks for those institutions. No rules of general application have been promulgated which set forth standards and criteria for expelling or suspending pupils from educational programs, although the Act requires promulgation of rules regarding these matters.

Section 3.09 of the IAPA defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy." It appears that manuals, policy documents, and handbooks in general use within the Department institutions actually serve as "rules" although they are not currently filed with the Department's Administrative Regulations.

Because of the incompleteness of rules promulgated by the School Board, residents of correctional institutions probably could not gain an understanding of their rights from reading the Administrative Regulations as they are now constructed. Promulgation of rules required by the IAPA as well as the Act creating the school district is, therefore, recommended.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Agreed to Implement Recommendation

Organization of the Department of Corrections School District #428 and the Educational Program

Joint Committee Recommendation: September 16, 1982

Specific Recommendation:

Section 4.01 of the Illinois Administrative Procedure Act requires that each agency maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rulemaking procedures with necessary flow charts depicting same.

None of these required rules have been filed concerning the Department of Corrections School District #428. The Department has charts depicting the organization of the school district; however, these documents are not filed with the Secretary of State.

The absence of the rules above constitutes a failure to fulfill the mandate of Section 4.01 of the IAPA. It is recommended, therefore, that rules be promulgated depicting the organization of Department of Corrections School District #428.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Refused to Implement Recommendation

Department of Labor

Private Employment Agency Act - Applications for Licenses

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

It is immediately notable that the Department of Labor's Private Employment Agency Rules begin with a section on the revocation and suspension of licenses, and deals almost exclusively with that subject. There are no rules on file

regarding applications for licenses, or outlining the procedure for or basis on which licenses are granted or denied. An examination of the Act indicates, however, that considerable discretion is reposed in the Department in making an original decision to grant or deny a license.

Section 1 of the Act relating to licensing of employment agencies (Ill. Rev. Stat. 1979, ch. 111, par. 901), provides in part:

Upon the filing of such application, the Department shall cause an investigation to be made as to the character and the business integrity and financial responsibility of the applicant and those mentioned in the application, and as to the fitness of the premises to be used. The application shall be rejected if the Department shall find that any of the persons named in the application is not of good moral character, business integrity and financial responsibility, if the premises are unfit or if there is any good and sufficient reason within the meaning and purpose of this Act for rejecting such application.

The Department was asked to explain the procedures or rules which apply to investigations, and the guidelines which are used to judge the character, business integrity and financial responsibility of applicants.

The Department indicated that the investigative procedures are basic investigative procedures for on premises investigations. In addition, written interrogatories and other applicant volunteered information is used. As a measure of financial responsibility, the applicant's reported bank balance is measured against their reported anticipated three month operating expenses. The Department seeks to verify the reported bank balance with the applicant's bank. Also, the applicant is asked if he has ever filed bankruptcy.

The Department indicated that "good moral character, business integrity and financial responsibility," are measured by letters of recommendation, and the evaluation of financial information and records. The Department did not, however, explain how financial information and records are evaluated, or how the letters of recommendation are used.

Also not explained in the rule is how the Department determines whether the premises of a prospective licensee are unfit, and what other factors the Department uses in determining whether there are "any good and sufficient reason(s) within the meaning and purpose of this Act for rejecting such application."

The foregoing discussion clearly indicates that the Department has some general guidelines for determining the fitness of applicants for licensing. In addition, it is clear from a reading of the Act that the Department exercises discretionary power in judging the various factors outlined in the Act. The Department has declined to modify the rules to include the standards, guidelines and procedure used in evaluating applicants for licensure.

Section 3.09 of the Illinois Administrative Procedure Act defines rule as including any statement of general applicability which prescribes, interprets, or applies law or policy. Section 4.02 of the Illinois Administrative Procedure Act mandates that rules must include standards and criteria for the exercise of discretionary powers. Since the existing rules do not include the relevant agency policy on granting and denial of license application, and also do not include standards for the exercise of discretion granted by the statute, the Joint Committee recommends that the Department of Labor promulgate rules delineating the procedures, standards and criteria used in determining the granting or denial of applications for licenses.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Private Employment Agency Act - Conducting and Evaluating
Examinations of Applicants for Licensure

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

Section 4 of the Act requires that an examination be administered "to test the applicant's knowledge of the employment agency law, pertinent labor laws and laws against discrimination." (Ill. Rev. Stat. 1979, ch. 111, par. 904) The Department was asked what methods and procedures have been established by the Department to ensure that the requirement of the Act is met.

The Department responded that it ensures the applicant's knowledge through a "validly verified written examination."

The Department's rules are silent about this examination. There is no explanation of when and where the tests are conducted, the form of the test, the subject matter examined, or the minimal level of competence needed to pass the examination. The Department's failure to include its policies concerning the examination may be considered a violation of the Illinois Administrative Procedure Act. The policies of the Department appear to clearly fall within the IAPA definition of "rule" as implementing and applying law. As such, those policies should be filed as required by the Illinois Administrative Procedure Act.

Members of the public who are subject to Department requirements to obtain a license should be able to gain a clear understanding of the requirements from reading the Department's rules. As this rule currently reads, this is not possible because the necessary information is not present.

Therefore, the Joint Committee recommends that the Department of Labor promulgate rules defining the procedures, standards and criteria used by the Department in conducting and evaluating examinations directed pursuant to Section 4 of the Act.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Wage Claim Hearing Process

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

The Wage Payment and Collection Act authorizes the Department of Labor "to investigate and attempt equitably to adjust controversies between employees and employers in respect of wage claims arising under this Act." (Ill. Rev. Stat. 1979, ch. 48, par. 39m-11). The Wage Claims Division utilizes an "informal" hearing process to implement this investigative and conciliatory power.

The Department has indicated that it receives about 12,000 claims annually. Fifty to sixty percent of the claims received in a year result in hearings. If, after the hearing, the Department makes a determination that the employer has violated the Wage Payment and Collection Act, it notifies the employer that, unless it pays the employee the amount found owing, within 15 days, the Division of Wage Claims will refer the case to the appropriate State's Attorney office for criminal

prosecution. Most claims are settled without criminal prosecution of the employer.

The Department of Labor has not promulgated any rules which explain or even acknowledge the existence of the wage claim hearings. At an agency conference held April 27, 1981, the Department representative indicated that the Department would resist "formalizing an informal process."

Considering the number of hearings held annually, and possible criminal penalties which may flow from the process, it would seem appropriate for the Department to explain in its rules the hearing procedures. Therefore, the Joint Committee recommends that the Department of Labor undertake rulemaking to outline its wage claim hearing process.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Department of Mental Health and Developmental Disabilities

Part 103, Grants

Initial Publication in Illinois Register: July 30, 1982

Date Second Notice Received: November 9, 1982

Joint Committee Objection: December 16, 1982

Specific Objection:

Section 103.10d)4)C), 103.60a)3), 103.65h)2) and 103.160c)5)A).

The Joint Committee objects to Sections 103.10d)4)C), 103.60a)3), 103.65h)2) and 103.160c)5)A) because these sections reference the Department's Recipient Discharge/Linkage/Aftercare Manual which is not on file with the Secretary of State as a rule.

The Department's Recipient Discharge/Linkage/Aftercare Manual contains the Department's policies and procedures for adequate discharge planning, linkage and follow-up aftercare of recipients being discharged from State-operated facilities.

The Joint Committee determined that the Recipient Discharge/Linkage/Aftercare Manual does fall within the definition of a "rule" contained in Section 3.09 of the Illinois Administrative Procedure Act (Illinois Revised Statutes, ch.

127, par. 1003.09) and therefore objected to Sections 103.10d)4)C), 103.60a)3), 103.65h)2)and 103.160c)5)A) of the Department of Mental Health and Developmental Disabilities' proposed Rule, Part 103, Grants, because those sections incorporate by reference that manual.

Date Agency Response Received: January 24, 1983

Nature of Agency Response: Modified to Meet the Joint Committee's Objections

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Department of Mines and Minerals

License and Certificate of Compliance Fees

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

Fees are assessed for licenses and certificates of compliance pursuant to statutory authorization (Ill. Rev. Stat. 1979, ch. 96 $\frac{1}{2}$, sec. 10.2-10.4, 7(4)). At the present time the license fee is \$15.00 with the graduated certificate fee as follows:

- | | |
|--|---------|
| 1. Blasting caps, regardless of quantity | \$15.00 |
| 2. Explosives to 20,000 pounds | \$15.00 |
| 3. Explosives 20,001 to 100,000 pounds | \$40.00 |
| 4. Explosives 100,001 to 300,000 pounds | \$50.00 |

There are approximately 819 individuals currently licensed under the Act, excluding certificate holders. There were 983 and 988 certificates of compliance issued in the years 1979 and 1980 respectively. The annual revenue from fees for 1979 and 1980 were \$26,975 and \$26,595. The Department advised that the cost of administering the Act and the rules and regulations is roughly \$100,000 per year.

There appears to be a wide disparity between the income from fees assessed and the expense in terms of money and staff time required by the Department to fulfill its regulatory function in regard to explosives. Whether or not a cost of approximately \$75,000 above income represents a reasonable expense to the State would seem an appropriate matter for study and possible subsequent recommendation. Therefore, the Joint Committee recommends to the Department of Mines and Minerals that it undertake such a study.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Fire Prevention and Investigation Act, and "An Act Regulating the Manufacture, Possession, Storage, Transportation, Use, Sale or Gift of Explosives"

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

Both the Department of Mines and Minerals, and the Office of the State Fire Marshal have rules and regulations which apply to storage magazines of fireworks manufacturers. In June 1980, the Joint Committee received a complaint from a law firm representing a fireworks manufacturer. This complaint resulted from the fact that the State Fire Marshal cited the companies for violations of the rules and regulations as they pertain to the construction and location of magazines, specifically the acceptability of semi-trailers used to store fireworks, after the companies had obtained approval from the Department of Mines and Minerals. After investigation of the complaint, it was determined that there is a considerable amount of overlap between rules promulgated by the Department of Mines and Minerals and those promulgated by the Office of the State Fire Marshal. The citation issued by the State Fire Marshal was held in abeyance pending the resolution of this overlap issue.

The State Fire Marshal promulgated rules and regulations under "An Act relating to the investigation and prevention of fire," (Ill. Rev. Stat. 1979, ch. 127½, par. 6-20). The Department of Mines and Minerals promulgated rules under "An Act regulating the manufacture, possession, storage, transportation, use, sale or gift of explosives." (Ill. Rev. Stat. 1979, ch. 96½, pars. 4801-4822.)

The State Fire Marshal's Office contends that semi-trailers used for the storage of finished fireworks at a plant in Danville, Illinois do not comply with the requirements for magazines as stipulated in its rules. The fireworks companies, however, contend that they are in full compliance with the Department of Mines and Mineral's requirements for magazines. Not surprisingly, the fireworks companies assert that the overlap be cured by upholding the rules of the Department of Mines and Minerals.

Pursuant to the complaint filed with the Joint Committee, an analysis was made of the issues raised. It appeared at that time that the rules promulgated by the Office of the State Fire

Marshal for the construction of magazines do not exceed the statutory authority upon which they are based. The specific grant of authority for the promulgation of rules under "An Act relating to the investigation and prevention of fire" is found in Section 9:

No person, being the owner, occupant or lessee of any building or other structure which is so occupied or so situated as to endanger persons or property, shall permit such building or structure by reason of further construction, age, lack of proper repair, or any other cause to become especially liable to fire, or to become liable to cause injury or damage by collapsing or otherwise. An no person, being the owner, occupant or lessee of any building, or structure, shall keep or maintain or allow to be kept or maintained on such premises, combustible or explosive material or inflammable conditions, which endanger the safety of said buildings or premises.

The Office of the State Fire Marshal shall adopt and promulgate such reasonable rules as may be necessary to protect the public from the dangers specified in the preceding paragraph. Such rules shall require the installation of necessary fire detection, alarm and protection devices in all public or private buildings which are used or available for use of the housing or assembling of more than 50 persons simultaneously. A copy of any rule, certified by the State Fire Marshal, shall be received in evidence in all courts of this State with the same effect as the original.

It therefore appears that the State Fire Marshal is acting well within its statutory authority in the imposition of construction requirements for magazines; that is, the Fire Marshal is acting so as not to "endanger persons or property by reason of faulty construction, age, lack of proper repair, or any other cause...."

Furthermore, the State Fire Marshal has the authority to regulate fireworks plants under "An Act relating to the manufacture, possession, storage, transportation, sale and use of fireworks throughout the State of Illinois." (Ill. Rev. Stat. 1979, ch. 127 $\frac{1}{2}$, pars. 101-126) A fireworks plant is defined to include "all lands, with buildings thereon, used in connection with the manufacture or processing of fireworks, as well as storehouses located thereon for the storage of finished fireworks." The Act also defines the term "magazine," but fails to mention magazines in the subsequent text.

The rules and regulations promulgated by the Department of Mines and Minerals under "An Act regulating the manufacture, possession, storage, transportation, use, sale or gift of explosives" do not specifically address the storage of explosives in magazines. The Department seeks compliance with Section 5 of the Act, which provides for the issuance of certificates of compliance and licenses. Section 5 requires that "(m)agazines in which explosives shall be lawfully kept or stored shall be constructed of brick, concrete, iron or wood covered with iron, and shall have no openings except for ventilation and entrance."

Representatives from the Office of the State Fire Marshal and the Department met in an effort to develop some type of inter-agency agreement. This effort, however, was unsuccessful. Later, representatives of the Joint Committee met with representatives from the Office of the State Fire Marshal and the Department of Mines and Minerals in an effort to develop some type of inter-agency agreement regarding the standardization of regulations for magazines. Although both agencies agree that a resolution of the problem would be desirable, neither agency is willing to change its position with regard to the acceptability of fireworks stored in semi-trailers.

It seems that the resolution of dual jurisdiction between two executive branch agencies should properly be undertaken, at least in the first instance, by the executive branch. Accordingly, the Joint Committee recommends that the Department of Mines and Minerals work with the Governor's Administrative Rules Commission and the State Fire Marshal to develop appropriate legislation to amend the Fire Prevention and Investigation Act, and "An Act regulating the manufacture, possession, storage, transportation, use, sale or gift of explosives," to eliminate the overlapping jurisdiction over storage magazines for fireworks.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Department of Registration and Education

Procedures for Opening and Closing Investigations and Complaints Under the Collection Agency Act

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

Among the issues raised by the complaint of the Illinois Collectors Association were the Department's failure to resolve complaints which are not brought to hearing and the Department's pursuit of non-written complaints. The Association believes that the Department should have some type of procedure for closing complaints and notifying the collection agency when complaints are unsubstantiated and do not require a hearing. Often, the Association alleges, the collection agency must request a formal hearing in order to obtain a final adjudication. Even so, such a request can be denied by the Department, leaving an unresolved complaint on an agency's record.

The Joint Committee questioned the Department as to its complaint procedures and requested copies of any relevant written procedures and of all forms used in the administration of the Act. The Department accepts all complaints, written or oral, and investigates every complaint which alleges a violation of the Act or Rules. The first stage of such an investigation consists of mailing a form letter (CA-1) to the agency notifying the agency that a complaint has been received and requesting the agency to answer the complaint and to cease further contacts concerning the account in question until the matter is adjudicated by the Department. The agency's response is to include a copy of the account card, proof of debt, and all supporting documents. A complaint may also result in referral to the Investigative Section for a full scale investigation. In this case, the Department conducts a full scale examination of the agency's account records, stationery, and forms.

There is some discrepancy as to what happens next. According to the Department, the investigative staff may determine that there has been no violation or that there is insufficient evidence, in which cases the file will be closed. In the event that the investigative staff feels there is a possible case for the Regulatory Division and hearing, the file will be referred to an Assistant Deputy Director of Enforcement who finally determines whether the case should be referred to the Regulatory Division for hearing. However, form letters CA-2 and CA-14 are used to inform the complainant that the Department will continue to "monitor" the matter when evidence is insufficient. Form CA-9 tells the complainant that a file will be closed due to insufficient evidence, but also states that the file may be reopened if

additional evidence should become available. No similar form to be sent to the collection agency was submitted by the Department. The Department stated that it would "generally" close a complaint file if the complaint is more than a year old and the Department has received no subsequent complaints of a similar nature. Thus, it appears that the Department could keep an agency in a sort of "limbo" regarding a complaint -- never bringing it to hearing and never closing the file or notifying the agency that the file has been closed. Meanwhile, the agency has been requested to cease further contact with the debtor until the complaint is adjudicated.

There is a strong argument that the Act prohibits such treatment; Section 10 (Ill. Rev. Stat. 1979, ch. 111, par. 2035) provides:

Upon receipt of a complaint, the Director may order an investigation to determine the validity of the complaint. If the Director finds that an investigation is necessary, he shall order a hearing to be held....

Taken literally, the Act requires a hearing every time an investigation is ordered. Since the Department investigates every complaint which alleges a violation of the Act, Section 10 would require a hearing on every such complaint. Such an interpretation would force the Department to resolve every complaint.

The Department admits that Section 10 does appear to require a hearing in conjunction with every investigation, but argues that the legislature could not have intended that result. It would be unreasonable to require the Department to conduct a hearing just to close a case in which an investigation has been ordered. The investigation could clearly show that no violation has been committed, the parties could agree on some sort of settlement, or the agency could agree to correct whatever violation there was without going through the expense of a hearing. Such a policy would also put undue burdens on the Department's resources. The Department declined to change its policy to conform to Section 10 and suggested that curative legislation was in order.

The Department's procedures do appear to conform to its authority in connection with the regulation of other trades and occupations. Pursuant to Section 60c of the Civil Administrative Code (Ill. Rev. Stat. 1979, ch. 127, par. 60c), the Department may, upon its own motion, and shall, upon verified written complaint, investigate a registrant's actions, but it may do so only if the complaint or the complaint taken together with evidence makes a prima facie case. Significantly, a hearing is required under the Civil

Administrative Code only as a precondition to taking disciplinary action. Despite the Association's assertion that the Department should act only on written complaints, the fact that the Department is authorized to investigate upon its own motion would seem to allow the Department to investigate an oral complaint, especially since information sources used by the Department as the basis for the initiation of an investigation upon its own motion include "newspapers, magazines, official correspondence, scandal, casual conversations, rumor, inspections, and other investigations" (as indicated by the Department's "Investigations" manual).

The Collection Agency Act was enacted later in time and is more specific than Section 60c. Under the usual rules of statutory construction, Section 10 of the Act would be controlling. However, the Department has raised strong policy arguments, and stated its intention to continue to enforce the Collection Agency Act as it does its other licensing acts. Furthermore, there does seem to be some conflict and ambiguity in the statutes. Therefore, the Joint Committee recommends the Department consider legislation to clarify the Department's responsibilities regarding complaints, investigations, and hearings.

Such legislation could, but would not necessarily, address the problems of certainty in the complaint process. The Department is specifically authorized to promulgate "procedural rules." At the very least, such rules could include provisions for prompt handling of complaints and notice to agencies regarding the status of complaints. Therefore, the Joint Committee also recommends the Department promulgate rules outlining the complaint-investigation-hearing process.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Department of Revenue

Guidelines for Implementation of PA 82-121 (Farmland Assessments)

Joint Committee Recommendation: March 23, 1982

Specific Recommendation:

The Guidelines for Implementation of PA 82-121 (Farmland Assessments) are divided into five sections. The first of these contains definitions of terms for which PA 82-121 requires the Department to use U.S. Census Bureau definitions. The second section essentially paraphrases PA

82-121. The final three sections concern debasement factors, guidelines for alternate uses of farmland, and assessment of certain low-yield cropland. Taken as a whole, the Guidelines establish policy to be used by local assessors in determining the value of Illinois farmland for tax purposes.

Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1003.09) defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms."

The Guidelines are agency statements of general applicability that prescribe policy. Therefore, the Joint Committee recommends that they be promulgated as rules as required by Section 5 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1005).

Date Agency Response Received: July 21, 1982

Nature of Agency Response: Refused to Implement Recommendation

Illinois Real Property Appraisal Manual

Joint Committee Recommendation: March 23, 1982

Specific Recommendation:

The Illinois Real Property Appraisal Manual was published in 1980 and contains guidelines for local assessors charged with the duty of valuing real property. It contains a number of statements of policy, including requirements for recordkeeping and formulae for valuing various kinds of real property.

Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1003.09) defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms."

The Illinois Real Property Appraisal Manual contains numerous agency statements of general applicability which prescribe

policy. Therefore, the Joint Committee recommends that the Manual be promulgated as a rule as required by Section 5 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1005)

Date Agency Response Received: July 21, 1982

Nature of Agency Response: Refused to Implement Recommendation

Miscellaneous Agencies

Illinois Environmental Protection Agency

Fee Structure for Water Supply Operator Certification

Joint Committee Recommendation: November 17, 1982

Specific Recommendation:

Under "An Act to regulate the operating of a public water supply" (Ill. Rev. Stat. 1979, ch. 111½, par. 501, et seq.), the Illinois Environmental Protection Agency is charged with examining and evaluating the qualifications of candidates for water supply operator certification and with issuing appropriate certificates of competency. Section 22 of the Act (Ill. Rev. Stat. 1979, ch. 111½, par. 522) sets various fees in relation to these certifications. Section 22 provides that:

Fees for the issuance, renewal, or restoration of an Illinois Water Supply Operator Certificate shall be as follows:

- (a) The fee to be paid by a new applicant who does not hold a valid Illinois certificate of competency is \$10.
 - 1. An applicant initially failing to pass the examination may apply for re-examination and shall be re-examined without payment of additional fees.
 - 2. The fee to be paid for subsequent examinations to determine his fitness to receive a certificate of competency is \$5.

- (b) The fee to be paid by an applicant desiring a higher classification and holding a valid Illinois Certificate of Competency is \$5.
 - 1. An applicant initially failing to pass the examination may apply for re-examination and shall be re-examined without payment of additional fee.
 - 2. The fee to be paid for subsequent examinations to determine his fitness to receive a certificate of competency is \$5.
- (c) The fee to be paid by an applicant prior to issuance of a certificate of competency under Section 20 of this Act is \$10.
- (d) The fee to be paid by an applicant prior to issuance of a certificate of competency under Section 21 of this Act is \$10.
- (e) The fee to be paid by an applicant for the renewal of a certificate of competency other than certificate issued under Section 21 of this Act is \$5.
- (f) The fee to be paid for the restoration of a certificate of competency is \$10.
- (g) The fee to be paid for the issuance of a duplicate certificate of competency is \$5.

In response to the Joint Committee questions, the Agency stated that revenues generated through the administration of the Act were:

FY 1979	\$ 9,112.00
FY 1980	\$10,442.00

while the costs of administering the Act were:

FY 1979	\$104,000.00
FY 1980	\$113,900.00

During these two fiscal years, revenues generated through fees amounted only to approximately 10% of the costs of administration. It may be fiscally more responsible for certificate holders and candidates to bear a larger share of the administration costs of this program, particularly when individual fees are at the relatively low levels of \$5 and \$10. Section 22 of the Act has not been amended since 1973, when the entire Act was reorganized and renumbered. In fact, the fee structure for water supply operator certification has remained virtually unchanged since this Act was first enacted, with fees having hovered around the \$5 to \$10 range since 1963. It may now be time to re-examine and update this section of the Act.

Therefore, the Joint Committee recommends that the Agency review this fee structure to determine whether rates should be raised and, if so, to develop and introduce legislation to implement such increases.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Illinois Industrial Commission

Written Findings of Fact and Conclusions of Law

Joint Committee Recommendation: May 11, 1982

Specific Recommendation:

Section 19(e) of the Workers' Compensation Act (Ill. Rev. Stat., ch. 48, par. 138.19(e)) provides in part as follows:

Beginning January 1, 1981, all decisions of the Commission shall set forth in writing the reasons for the decisions, including findings of fact and conclusions of law, separately stated.

Decisions rendered by the Commission shall be published by the Commission and the conclusions of law set out in such decision shall be regarded as precedents by arbitrators and committees of arbitration, for the purpose of achieving a more uniform administration of this act.

This language was added by Public Act 81-1482, the apparent intent of which was to bring some consistency and predictability to decisions rendered under the Worker's Compensation Act. In closing the Senate debate on the conference committee report concerning this Act, Senator Bruce had the following to say:

The fact that we're going to finally get written decisions, giving facts and reasons for the decision, are going to establish rules that each of the arbitrators can take a look at; and those will be published and circulated not only for the arbitrators, but for the employees, the employers and the attorneys. (July 1, 1980: debate on HB 3250, 1st Conference Committee Report).

Taking into consideration the language of the Act itself, and the comments of Senator Bruce arguing for its passage on the floor of the Senate, it appears that the requirement of published findings of fact and conclusions of law was intended to benefit all persons affected by the Workers' Compensation Act and the actions of the Industrial Commission.

The statute does not say that all parties shall have a right to written reasons for the decision. Rather, it requires action by the Commission for the benefit of employers, employees, and all other persons who are or who may someday be affected by the workers compensation laws of this State. In other words, to allow two parties to a workers' compensation case to waive the requirement of published findings of fact and conclusions of law would violate the legislative intent behind P.A. 81-1482.

Finding the Industrial Commission's policy objectionable for these reasons, the Joint Committee recommends that the Commission reconsider that policy.

Date Agency Response Received: August 13, 1982

Nature of Agency Response: Refused to Implement Recommendation

Liquor Control Commission

Rule 24 of "Rules and Regulations Under the Liquor Control Act"

Joint Committee Recommendation: December 16, 1982

Specific Recommendation:

Rule 24 states in relevant part as follows:

A retail licensee honoring credit cards or authorizations issued by a non-licensed agency under this regulation may not advertise that same in any way except by dignified signs in the interior or on the exterior of the licensed premises or by a table card.

The original intent of this rule was to limit the manner in which retail licensees could advertise that they grant credit. This rule has been the subject of litigation (Walgreen Co. v. Illinois Liquor Control Commission, 101 Ill. App.3d 216, 427 N.E.2d 1307 (1981)). In this case, a licensee appealed from the Liquor Control Commission's order finding Walgreens to have violated the Commission's rule placing restrictions on advertising the fact that credit cards could be used for the purchase of liquor.

The Appellate Court ruled that the rule, which totally banned advertising off the premises, in any form, of liquor licensees' statutorily authorized privilege of accepting credit cards, violated the licensees' constitutional right to commercial free speech, and permanently enjoined the Commission from enforcing the rule.

Despite the fact that the Appellate Court for the Third District handed down this decision on October 22, 1981, and the decision was not appealed, the rule has not been repealed. Since this rule has been declared unconstitutional and the Commission has been permanently enjoined from enforcing this portion of the rule, it is recommended that the Illinois Liquor Control Commission repeal the offending portion of Rule 24.

Date Agency Response Received: Response Pending

Nature of Agency Response: Response Pending

Educational Agencies

State Board of Education

Driver Education Courses - Certification by the Board

Joint Committee Recommendation: October 13, 1982

Specific Recommendation:

In the course of the review of the "Rules and Regulations to Govern the Administration of the Driver Education Act," the Joint Committee was furnished a copy of the "Illinois Driver Education Curriculum." The Board identified this comprehensive curriculum as a packaged program of recommended guidelines for driver education. The "Illinois Driver Education Curriculum" appears to be the standard by which public and private driving courses are measured, and by which the Board exercises its power of course approval.

The Board believes that the distribution of the curriculum is sufficient, in regard to its availability to the public. However, because courses constructed along the lines of the "Illinois Driver Education Curriculum" must be approved by the Superintendent, the standards and criteria should be promulgated as rules. Those members of the public who are subject to the regulation by the State Board of Education should be able to understand from reading the Board's rules the criteria for approval of courses they submit for certification.

If the "Illinois Driver Education Curriculum" is in fact required to be followed, then it clearly constitutes a rule within the purview of the IAPA. If it is not required, then the Board should indicate exactly what is required in the rule itself.

Section 4.02 of the IAPA requires that each rule which implements a discretionary power to be exercised by the agency shall include the standards by which the agency shall exercise the power. Because of this, the "Illinois Driver Education Curriculum," or other standards actually used by the Board not now embodied in rules, should be included in the rules. The Joint Committee recommends to the State Board of Education that it promulgate rulemaking which establishes the standards and criteria for course approval.

Date Agency Response Received: January 31, 1983

Nature of Agency Response: Refused to Implement Recommendation

Application and Renewal Fees Assessed for Private Business and Vocational Schools

Joint Committee Recommendation: October 13, 1982

Specific Recommendation:

Fees assessed by the State Board of Education for original and renewal certificates of approval for private business and

vocational schools are set by statute. Paragraph 145 of the Act regulating private business and vocational schools provides for fees of \$75.00 for schools for original applications and \$37.50 for annual renewal of certificates of approval. Similarly, fees for original and renewal applications for permits for school solicitors are established in paragraph 146 of the Act. These are set at \$50.00 for original applications and \$25.00 for renewals.

There are currently 237 approved schools and 150 additional instruction sites, with roughly 400 approved solicitors. Application fees collected by the State Board during fiscal year 1981 totaled \$29,387. According to State Board estimates, the cost of regulation of private business and vocational schools totaled \$264,879 for the same period of time.

There appears to be a wide disparity between the income from fees assessed and the expense in terms of money and staff time required by the State Board to fulfill its regulatory mandate in regard to private business and vocational schools. Whether or not a cost of \$255,492 above income represents a reasonable expense to the State would seem an appropriate matter for study and possible subsequent legislative recommendation. It is recommended, therefore, that the State Board undertake such a study.

Date Agency Response Received: January 4, 1983

Nature of Agency Response: Agreed to Implement Recommendation

Requirements and Procedures for Approval of "Other" Special Education Personnel

Joint Committee Recommendation: May 11, 1982

Specific Recommendation:

A State Board of Education publication entitled "Special Education Certification and Approval Requirements and Procedures" lists and describes the requirements for personnel approval in various areas of special education for purposes of reimbursement. A recent revision to this publication detailed requirements for approval for reimbursement in areas titled "other."

The State Board publication contains policy statements and requirements which should be adopted as rules in accordance with the Illinois Administrative Procedure Act.

Therefore, the Joint Committee recommends that the State Board promulgate rules which describe the requirements and procedures for approval of "other" special education personnel.

Date Agency Response Received: August 6, 1982

Nature of Agency Response: Agreed to Implement Recommendation

Reimbursement for Special Education Costs

Joint Committee Recommendation: May 11, 1982

Specific Recommendation:

A State Board of Education memorandum recently sent to Regional Superintendents included "Instructions for Completing Request for Approval Special Education Personnel." The instructions describe procedures for application for reimbursement of Special Education costs under Section 14-13.01 of the School Code. These instructions contain statements which should be adopted as rules in accordance with the Illinois Administrative Procedure Act definition.

In addition, Section 14-12.01 of the School Code requires that applications for reimbursement be filed "in accordance with rules prescribed by the State Board of Education."

Therefore, the Joint Committee recommends that the State Board initiate rulemaking to describe reimbursement application procedures.

Date Agency Response Received: August 6, 1982

Nature of Agency Response: Agreed to Implement Recommendation

LEGISLATIVE ACTIVITY

In addition to the substantive review of proposed and existing agency rules, the Joint Committee conducts a variety of legislative activities in the area of the administrative rulemaking process and other related areas. These activities include developing and introducing Committee sponsored legislation, suggesting legislation to state agencies to help resolve problems with specific rules, and monitoring legislation which may have an impact on the rulemaking process.

BILLS RECOMMENDED OR SUGGESTED FOR CONSIDERATION DURING 1983

Each year the Joint Committee develops new legislation as a result of its review activities. The legislation may be in response to a particular problem encountered during the course of a review, or it may be developed to address changes or trends in the administrative rulemaking process. In addition to developing and introducing its own legislation, the Joint Committee frequently suggests legislation to affected agencies or to the appropriate standing committees of the legislature.

This portion of the Annual Report provides a brief summary and background for each bill which the Joint Committee is recommending for consideration during 1983. The full text of each bill is included in pages 213-270 of this report.

RECOMMENDED BILLS

BILL 1 (pages 211-214)

Background

Section 6.01 of the Illinois Administrative Procedure Act provides for the adoption of trade association or other national standards by maintaining these

standards in the agency's main office and in the State Library. This practice is to insure that such standards are available to interested parties while at the same time minimizing the costs of duplicating these standards in their entirety in the Illinois Register. Agencies have complained that, in some instances, maintaining two sets of standards is a heavy financial burden. To reduce these costs it is proposed to have the agency maintain a set in its principal office and eliminate the requirement to also furnish a set to the State Library.

Summary

Amends the Illinois Administrative Procedure Act by adding a new section 6.02 that will allow trade association standards adopted by reference to be maintained by the state agency without requiring that they be filed with the State Library.

BILL 2 (pages 215-217)

Background

The Joint Committee issued objections to the State Board of Education's Teacher Certification Rules due to conflicts with the School Code. This bill would repeal Section 1A-7 of the School Code and amend Section 2 of the Administrative Procedure Act to provide that State Board of Education statements, guidelines and policies having the force of law are not exempt from the Administrative Procedure Act.

Summary

Bill 2 would repeal Section 1A-7 of the School Code and amend Section 2 of the Illinois Administrative Procedure Act to eliminate the exemption of the State Board of Education's Teacher Certification from the Administrative Procedure Act.

BILL 3 (pages 219-220)

Background

During the course of the Joint Committee's Five Year Review, a potential problem was uncovered relating to an "actual knowledge" provision contained in Section 4(c) of the Illinois Administrative Procedure Act. It was felt that the "actual knowledge" provision could be used to undermine certain sections of the IAPA. The provision might be interpreted, for example, as allowing an agency to by-pass the Act's provisions by providing some alternative method of public notification of rulemaking.

Summary

Bill 3 would delete the "actual knowledge" provision currently contained in the IAPA.

BILL 4 (pages 221-224)

Background

During the Joint Committee's review of State Travel rules it was found that certain travel rules of the Attorney General, the Comptroller, the Lieutenant Governor, the State Board of Education, the Secretary of State, and the State Treasurer were actually internal rules, but were required to be published in accordance with the Illinois Administrative Procedure Act. The Joint Committee is recommending that the publication and filing requirements be deleted from the various travel statutes and that the files be maintained and open for inspection.

Summary

Amends various travel statutes by deleting the requirement that travel rules be filed and take affect under the IAPA. The bill would also require that the various agencies' travel rules be available to the public at the agency headquarters.

SUGGESTED BILLS

BILL 5 (pages 225-226)

Background

Section 1 of the Coin Operated Amusement Device Tax Act provides for an annual privilege tax of \$10.00 for each coin-receiving slot on amusement devices. The rules of the Department of Revenue include the same provision.

The Department contends that the law as written is virtually impossible to administer due to the numerous types of slots, such as slots to make change. It appears that the primary thrust of the legislation was to tax the devices, and the Department's licensing form calls for an annual tax of \$10.00 per device. Thus, the actual administration of the tax is contrary to the law and the rules as written.

Summary

Amends the Coin Operated Amusement Device Tax Act by changing the provision for taxation of each coin-receiving slot to a provision for taxation of the device.

BILL 6 (pages 227-229)

Background

Section 9 of the Cigarette Tax Act provides that

(Every) distributor who is required to procure a license under this Act, but who is not a manufacturer of cigarettes in original packages which are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department, showing the quantity of cigarettes manufactured during the preceding calendar

month...(Ill. Rev. Stat. 1979, ch. 120, par. 453.9).

The provision does not appear to make any sense, and the Department of Revenue has agreed to delete references to it from their rules.

Summary

Amends the Cigarette Tax Act by deleting the provision requiring every distributor who is not a manufacturer of cigarettes to file a return with the Department of Revenue showing the quantity of cigarettes manufactured.

BILL 7 (pages 231-241)

Background

An issue arose during the Joint Committee's review concerning the Department of Revenue's policy on the issuance of refunds or credit memoranda after a finding that a tax was paid erroneously. Several tax laws, including the Retailer's Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act contain provisions that credit memoranda or refunds issued by the Department will bear interest at the rate of 6% annually, from the date of erroneous payment of the tax until issuance of the credit memoranda or refund.

There are no such provisions, however, in the Messages Tax Act, Gas Revenue Tax Act, Public Utilities Revenue Act, Cigarette Tax Act, or "An Act relating to alcoholic liquors."

Summary

Amends the Messages Tax Act, Gas Revenue Tax Act, Public Utilities Revenue Act, Cigarette Tax Act, and "An Act relating to alcoholic liquors" to provide that credit memoranda or refunds issued by the Department of Revenue earn interest from the date of erroneous payment up to the date of issuance.

BILL 8 (pages 243-245)

Background

The Office of the Commissioner of Savings and Loan promulgated rules regulating the qualifications for non-independent property appraisers. The Joint Committee found that in doing so the Commissioner exceeded his statutory authority.

Summary

Amends the Illinois Savings and Loan Act to provide that property appraiser's qualifications and property appraisals are subject to the Commissioner's regulations.

BILL 9 (pages 247-249)

Background

The Lead Poisoning Prevention Act requires that violations of the Act be corrected within 30 days. The Department of Public Health's rules, however, allow for extensions of time in which to correct lead hazards. The Joint Committee issued an objection to the rule allowing the exemption. Because the Department needs some flexibility in this area, a change is necessary to remove the mandatory 30 day limit from the Act.

Summary

Amends the Lead Poisoning Prevention Act to delete the 30 day mandatory requirement and substitute authority to grant extensions in certain situations.

BILL 10 (pages 251-254)

Background

The Joint Committee has found that the Hospital Licensing Act fails to provide certain standards and criteria for determinations by the Department of Public Health regarding termination of research programs.

Summary

Amends the Hospital Licensing Act to provide that the Department shall adopt rules which set forth standards regarding termination of a research program or experimental procedure conducted by a hospital.

BILL 11 (pages 255-258)

Background

The Department of Agriculture and the Department of Public Health have overlapping responsibility in the area of warehouse inspection and regulation. The Department of Agriculture feels that their responsibility in the area should be transferred.

Summary

Amends the Salvage Warehouse Act. Transfers responsibility for administration of the Act from the Department of Agriculture to the Department of Public Health.

BILL 12 (pages 259-260)

Background

The Joint Committee objected to the repeal of the Department of Agriculture's rules pertaining to paint and oil manufacturing methods because the Department is mandated by the Paints and Oils Act to promulgate rules. The Department contends that the Act and the rules are out of date due to new

manufacturing processes. This bill was originally introduced in the 82nd General Assembly but was held up in committee.

Summary

Repeals the Paints and Oils Act.

BILL 13 (pages 261-263)

Background

The Joint Committee found during its review program that an overlap exists between the Department of Corrections School District and the Department of Corrections regarding the education of individuals committed to Illinois correctional facilities.

Summary

Amends the School Code to clarify the rules of the School District and the Department of Corrections.

BILL 14 (pages 265-268)

Background

There is currently a regulatory overlap between state agencies in regard to private business and vocational schools. The overlap is between the rules of the State Board of Education and the Secretary of State for regulation of commercial driver training schools.

Summary

Amends Section 6-411(g) of chapter 95½ (motor vehicles) to provide that State Board of Education approval is not required for commercial driver training schools.

Background

The Joint Committee objected to certain internal rules adopted by the Illinois Nature Preserves Commission because the rules had not been validly adopted jointly with the Department of Conservation. This requirement of joint rulemaking authority is found in Section 6.08 of the Illinois Natural Areas Preservation Act, (Ill. Rev. Stat., ch. 105, par. 706.08) and is somewhat unwieldy in practice.

Summary

To amend Sections 6.08 and 7.03 (Ill. Rev. Stat., ch. 105, paras. 706.08 and 707.03) to eliminate the joint rulemaking authority of the Illinois Nature Preserves Commission and the Department of Conservation and to allow the Commission to adopt rules after seeking the advice and approval of the Department.

PRIOR RECOMMENDATIONS FOR LEGISLATION

A number of bills were recommended by the Joint Committee in the 1981 Annual Report for introduction in the legislature in 1982. The complete text of these bills can be found in the Joint Committee's 1981 Annual Report.

House Bill 2300 addressed a number of problems the Joint Committee has encountered with the "second notice period." The bill would have allowed agencies to extend the second notice period to provide additional time for consideration by the Joint Committee, and would also have allowed agencies to formally withdraw second notices and subsequently resubmit them. The bill was left in the House Rules Committee and may be considered in the 1983 session.

Senate Bill 1448 developed out of the Joint Committee's five-year review of the Department of Public Health's regulations relating to the Illinois Plumbing Code. The bill would have amended the Plumbing Code to require that the

Department adopt rules to insure that administrative searches to enforce the Plumbing Code are conducted in compliance with the Fourth Amendment. The bill was left in the Senate Rules Committee.

Senate Bill 1449 was developed to help ease the cumbersome rulemaking procedure of the Pollution Control Board. Basically, the bill would have provided that the procedure need not be followed as long as the Board complied with the provisions of the Environmental Protection Act and the Illinois Administrative Procedure Act. This bill was tabled in the House Energy and Environment Committee.

Another bill, Senate Bill 1614, addressed a problem with a lack of standards for exercising an agency discretionary power. The bill required that the Department of Registration and Education set standards for the Medical Disciplinary Board in connection with the terms "Rehabilitation, immoral conduct, gross misconduct, and dishonorable or unethical conduct," and would make other changes relating to Medical Disciplinary Board practices and procedures. The Governor recommended a number of specific changes to the bill through his amendatory veto power. Both houses accepted the Governor's changes and the bill was passed into law.

A bill which was recommended by the Joint Committee in the 1980 Annual Report was also acted on by the legislature during 1982. House Bill 834 would have required state agencies to formulate their rules in plain and clear English. The bill passed in the House but stalled in the Senate Rules Committee.

The Joint Committee was also instrumental in the development of two important bills relating to the requirements of the Illinois Administrative Procedure Act.

Senate Bill 1212 made various amendments to the Corn Marketing Act. The bill deletes prescribing and administering of rules and regulations from the duties of the corn marketing program and the corn marketing board. The bill provides for various procedures relating to the corn marketing program and exempts the procedures from the requirements of the Illinois Administrative Procedure Act. Steps are provided to allow for informing affected parties and

filing the program with the Secretary of State, and specific sections of the Act are exempted from Section 5, 5.01, 7.04-7.08 of the IAPA. The bill passed in both houses and was enacted into law.

House Bill 2432 amended the School Code by adding an amendment to the paragraph on the applicability of the Illinois Administrative Procedure Act which deleted State Board of Education statements, guidelines or policies which do not have the force of law from exclusions from the IAPA. The bill passed in the House but was held up in the Senate Rules Committee.

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL ONE

SYNOPSIS: (Ch. 127, par. 1006.01, new par. 1006.02)

Amends the Administrative Procedure Act. Deletes provisions authorizing agencies to incorporate federal regulations into their rules by reference to the Federal Register or the Code of Federal Regulations and requiring agencies to file trade association standards with the Secretary of State or State Library when incorporating the standards into their rules. Provides that an agency may incorporate federal rules and trade association standards by reference by making a copy of the rules or standards available for public inspection.

LRB8302361RLjw

A BILL FOR

1 AN ACT to amend Section 6.01 of and to add Section 6.02 50
 2 to "The Illinois Administrative Procedure Act", approved 51
 3 September 22, 1975, as amended. 52

4 Be it enacted by the People of the State of Illinois, 56
 5 represented in the General Assembly:

6 Section 1. Section 6.01 of "The Illinois Administrative 52
 7 Procedure Act", approved September 22, 1975, as amended, is 59
 8 amended, and Section 6.02 is added thereto, the added and 60
 9 amended Sections to read as follows:

(Ch. 127, par. 1006.01) 62

10 Sec. 6.01. Form and publication of notices. ~~to~~ The 64
 11 Secretary of State may prescribe reasonable rules concerning 65
 12 the form of documents to be filed with him, and may refuse to 66
 13 accept for filing such certified copies as are not in 67
 14 compliance with such rules. In addition, the Secretary of 68
 15 State shall publish and maintain the Illinois Register and 68
 16 may prescribe reasonable rules setting forth the manner in 69
 17 which agencies shall submit notices required by this Act for 70
 18 publication in the Illinois Register. The Illinois Register 71
 19 shall be published at least once each week on the same day 72
 20 unless such day is an official State holiday in which case 73
 21 the Illinois Register shall be published on the next 74
 22 following business day and sent to subscribers who subscribe 74
 23 for the publication with the Secretary of State. The 75
 24 Secretary of State may charge a subscription price to 76
 25 subscribers that covers mailing and publication costs.

26 ~~(b) If an agency proposes or adopts Federal rules or~~ 78
 27 ~~portions thereof, the requirement that the full text thereof~~ 79
 28 ~~be filed with the Secretary of State and published in the~~ 80
 29 ~~Illinois Register shall be satisfied by including in the text~~ 31
 30 ~~of the proposed or adopted rules a statement that the agency~~
 31 ~~proposes to adopt or is adopting such Federal rules with a~~ 82
 32 ~~specific citation to the Federal Register or Code of Federal~~ 33

1 Regulations where the text appears, if an agency proposes or 84
 2 adopts as rules the standards or guidelines or portions 85
 3 thereof of any professional trade or other association or
 4 entity, the requirement that the full text thereof be filed 86
 5 with the Secretary of State and published in the Illinois
 6 Register shall be satisfied by including in the text of the 87
 7 proposed or adopted rules a specific citation to the
 8 standards or guidelines and filing with the Secretary of
 9 State a photographic or other reproduction of such standards 90
 10 or guidelines. However, if the set of standards or 91
 11 guidelines is available in the Illinois State Library, the
 12 Secretary of State shall waive the requirement of filing a 93
 13 photographic or other reproduction of such standards or
 14 guidelines. This section shall not permit an agency to adopt 94
 15 future amendments in the rules, standards or guidelines 95
 16 without following the procedures required by this Act.
 17 Adoption by reference under this section is limited to the 96
 18 adoption of rules, standards or guidelines as of a certain 98
 19 date which the agency shall specify when the text is filed 99
 20 with the Secretary of State and published in the Illinois
 21 Register. Nothing in this section shall relieve the agency 100
 22 of the requirement that the full text of adopted rules,
 23 including federal rules, standards and guidelines adopted by 102
 24 reference as provided in this section, be filed in the 103
 25 agency's principal office under Section 6 of this Act. 104

(Ch. 127, new par. 1006.02) 106

26 Sec. 6.02. Incorporation By Reference. An agency may 108
 27 incorporate by reference, in its rules adopted in accordance 109
 28 with Section 5 of this Act, regulations or rules of an agency 110
 29 of the United States or of a nationally recognized 111
 30 organization or association without publishing the
 31 incorporated material in full. The reference in the agency 112
 32 rules must fully identify the incorporated matter by location 113
 33 and date, and must state that the rule does not include any 114
 34 later amendments or editions. The agency adopting the rule 115

1	<u>shall maintain a copy of the referenced regulation, rule or</u>	115
2	<u>standard and shall make it available to the public upon</u>	116
3	<u>request for inspection and copying at no more than cost. An</u>	117
4	<u>agency may also at its discretion file a copy of referenced</u>	118
5	<u>regulations, rules or standards with the State Library. An</u>	119
6	<u>agency may incorporate by reference such matters in its rules</u>	
7	<u>only if the agency, organization or association originally</u>	120
8	<u>issuing the matter makes copies readily available to the</u>	121
9	<u>public. This Section shall not apply to any agency internal</u>	122
10	<u>manual.</u>	

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL TWO

SYNOPSIS: (Ch. 122, rep. par. 1A-7 and Ch. 127, par. 1002)

Amends "The School Code" and "The Illinois Administrative Procedure Act" to eliminate an exemption from the Administrative Procedure Act relating to policy statements of the State Board of Education. Effective immediately.

LRB8302359JSDv

~~Fiscal Note Act~~
may be applicable

A BILL FOR

1 AN ACT to repeal Section 1A-7 of "The School Code", 49
 2 approved March 13, 1961, as amended, and to amend Section 2 50
 3 of "The Illinois Administrative Procedure Act", approved 51
 4 September 22, 1975, as amended. 52

5 Be it enacted by the People of the State of Illinois, 56
 6 represented in the General Assembly:

(Ch. 120, rep. par. 1A-7) 58

7 Section 1. Section 1A-7 of "The School Code", approved 60
 8 March 13, 1961, as amended, is repealed. 61

9 Section 2. Section 2 of "The Illinois Administrative 63
 10 Procedure Act", approved September 22, 1975, as amended, is 64
 11 amended to read as follows:

(Ch. 127, par. 1002) 56

12 Sec. 2. This Act applies to every agency as defined 58
 13 herein. Beginning January 1, 1978 in case of conflict 69
 14 between the provisions of this Act and the Act creating or 70
 15 conferring power on an agency, this Act shall control. 71
 16 However if an agency has existing procedures on July 1, 1977 72
 17 specifically for contested cases or licensing those existing 73
 18 provisions control, except that this exception respecting 74
 19 contested cases and licensing does not apply if the Act 75
 20 creating or conferring power on the agency adopts by express 76
 21 reference the provision of this Act. Where the Act creating 77
 22 or conferring power on an agency establishes administrative 77
 23 procedures not covered by this Act, such procedures shall 78
 24 remain in effect.

25 The provisions of this Act shall not apply to (1) 30
 26 preliminary hearings, investigations or practices where no 31
 27 final determinations affecting State funding are made by the 32
 28 State Board of Education. (2) ~~State Board of Education~~ 33
 29 ~~statements, guidelines or policies which do not have the~~ 34
 30 ~~force of law~~ legal opinions issued under Section 2-3.7
 31 of The School Code, (2) and (4) as to State colleges and 35

1	universities, their disciplinary and grievance proceedings,	86
2	academic irregularity and capricious grading proceedings, and	87
3	admission standards and procedures, and <u>(4)</u> (5) the class	88
4	specifications for positions and individual position	89
5	descriptions prepared and maintained pursuant to the	90
6	"Personnel Code"; however such specifications shall be made	91
7	reasonably available to the public for inspection and	
8	copying. Neither shall the provisions of this Act apply to	92
9	hearings under Section 20 of the "Uniform Disposition of	93
10	Unclaimed Property Act".	94
11	Section 3. This Act takes effect upon its becoming a law.	96



85rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL THREE

SYNOPSIS: (Ch. 127, par. 1004)

Amends The Illinois Administrative Procedure Act to delete from provision that no agency rule is valid until it has been made available for public inspection and filed with the Secretary of State the exception for any person who has actual knowledge of an agency rule.

LRB8301514ESjw

A BILL FOR

1 AN ACT to amend Section 4 of "The Illinois Administrative 50
2 Procedure Act", approved September 22, 1975, as amended. 52

3 Be it enacted by the People of the State of Illinois, 56
4 represented in the General Assembly:

5 Section 1. Section 4 of "The Illinois Administrative 58
6 Procedure Act", approved September 22, 1975, as amended, is 59
7 amended to read as follows:

(Ch. 127, par. 1034) 61

8 Sec. 4. Adoption of Rules; Public Information, 63
9 Availability of Rules.) (a) In addition to other rule-making 64
10 requirements imposed by law, each agency shall: 65

11 1. adopt rules of practice setting forth the nature and 67
12 requirements of all formal hearings; 68

13 2. make available for public inspection all rules 70
14 adopted by the agency in the discharge of its functions. 71

15 (b) Each agency shall make available for public 73
16 inspection all final orders, decisions and opinions, except 74
17 those deemed confidential by state or federal statute and any 75
18 trade secrets.

19 (c) No agency rule is valid or effective against any 77
20 person or party, nor may it be invoked by the agency for any 78
21 purpose, until it has been made available for public 79
22 inspection and filed with the Secretary of State as required 80
23 by this Act. ~~This provision is not applicable in favor of~~
24 ~~any person or party who has actual knowledge thereof~~ 81

25 (d) Rule-making which creates or expands a State mandate 83
26 on units of local government, school districts, or community 84
27 college districts is subject to the State Mandates Act. The 85
28 required Statement of Statewide Policy Objectives shall be 86
29 published in the Illinois Register at the same time that the
30 first notice under Section 5.01 is published or when the rule 87
31 is published under Section 5.02 or 5.03. 89

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL FOUR

SYNOPSIS: (Ch. 127, pars. 168-21, 168-31, 168-41, 168-51, 168-61 and 168-71)

Amends various Acts to delete the requirement that the Attorney General, the Comptroller, the Lieutenant Governor, the State Board of Education, the Secretary of State and the State Treasurer be required to file travel regulations in accordance with the Illinois Administrative Procedure Act and to provide that such regulations be maintained and made available for public inspection in that agency's principal office.

LRB8301509SFm1

A BILL FOR

1	AN ACT in relation to the filing of travel regulations by	50
2	various State agencies.	51
3	<u>Be it enacted by the People of the State of Illinois.</u>	55
4	<u>represented in the General Assembly:</u>	
5	Section 1. Section 1 of "An Act in relation to the	53
6	regulation of travel by the personnel of the State Board of	59
7	Education", approved October 13, 1969, as amended, is amended	60
8	to read as follows:	
	(Ch. 127, par. 168-21)	52
9	Sec. 1. The State Board of Education shall promulgate and	65
10	publish travel regulations applicable to the office and to	56
11	personnel under its jurisdiction. Reimbursement for mileage	67
12	shall be paid at a rate of at least 17 cents per mile. <u>Such</u>	63
13	<u>regulations shall be maintained in the agency's principal</u>	69
14	<u>office and shall be available for public inspection. Such</u>	70
15	regulations shall be filed and take effect under the Illinois	71
16	Administrative Procedure Act	72
17	Section 2. Section 1 of "An Act in relation to the	75
18	regulation of travel by the personnel of the Office of the	76
19	Secretary of State", approved October 13, 1969, as amended,	77
20	is amended to read as follows:	
	(Ch. 127, par. 168-31)	79
21	Sec. 1. The Secretary of State shall promulgate and	81
22	publish travel regulations applicable to his office and to	32
23	personnel under his jurisdiction. Reimbursement for mileage	33
24	shall be paid at a rate of at least 17 cents per mile. <u>Such</u>	84
25	<u>regulations shall be maintained in the agency's principal</u>	35
26	<u>office and shall be available for public inspection. Such</u>	36
27	regulations shall be filed and take effect under the Illinois	
28	Administrative Procedure Act	33
29	Section 3. Section 1 of "An Act in relation to the	91
30	regulation of travel by the personnel of the Office of the	92
31	Attorney General", approved October 13, 1969, as amended, is	93

1 amended to read as follows: 93
 (Ch. 127, par. 168-41) 95

2 Sec. 1. The Attorney General shall promulgate and publish 97
 3 travel regulations applicable to his office and to personnel 98
 4 under his jurisdiction. Reimbursement for mileage shall be 99
 5 paid at a rate of at least 17 cents per mile. Such 100
 6 regulations shall be maintained in the agency's principal
 7 office and shall be available for public inspection. Such 102
 8 ~~regulations shall be filed and take effect under the Illinois~~
 9 ~~Administrative Procedure Act.~~ 104

10 Section 4. Section 1 of "An Act in relation to the 107
 11 regulation of travel by the personnel of the Office of the 108
 12 State Treasurer", approved October 13, 1969, as amended, is 109
 13 amended to read as follows:

 (Ch. 127, par. 168-51) 111

14 Sec. 1. The State Treasurer shall promulgate and publish 113
 15 travel regulations applicable to his office and to personnel 114
 16 under his jurisdiction. Reimbursement for mileage shall be 115
 17 paid at a rate of at least 17 cents per mile. Such 115
 18 regulations shall be maintained in the agency's principal
 19 office and shall be available for public inspection. Such 118
 20 ~~regulations shall be filed and take effect under the Illinois~~
 21 ~~Administrative Procedure Act.~~ 120

22 Section 5. Section 1 of "An Act in relation to the 123
 23 regulation of travel by the personnel of the Office of the 124
 24 Comptroller", approved October 13, 1969, as amended, is 125
 25 amended to read as follows:

 (Ch. 127, par. 168-61) 127

26 Sec. 1. The State Comptroller shall promulgate and 130
 27 publish travel regulations applicable to his office and to 131
 28 personnel under his jurisdiction. Reimbursement for mileage 132
 29 shall be paid at a rate of at least 17 cents per mile. Such
 30 regulations shall be maintained in the agency's principal 133
 31 office and shall be available for public inspection. Such 135
 32 ~~regulations shall be filed and take effect under the Illinois~~

1	Administrative-Procedure-Act	137
2	Section 6. Section 1 of "An Act in relation to the	140
3	regulation of travel by the personnel of the Office of the	141
4	Lieutenant Governor", approved October 13, 1969, as amended,	142
5	is amended to read as follows:	
	(Ch. 127, par. 168-71)	144
6	Sec. 1. The Lieutenant Governor shall promulgate and	146
7	publish travel regulations applicable to his office and to	147
8	personnel under his jurisdiction. Reimbursement for mileage	148
9	shall be paid at a rate of at least 17 cents per mile. <u>Such</u>	149
10	<u>regulations shall be maintained in the agency's principal</u>	150
11	<u>office and shall be available for public inspection. Such</u>	151
12	regulations shall be filed and take effect under the Illinois	
13	Administrative-Procedure-Act	153

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL FIVE

SYNOPSIS: (Ch. 120, par 481b.1)

Amends the "Coin-Operated Amusement Device Tax Act" to impose the tax provided for upon each device rather than each coin receiving slot.

LRB8301515JSsb

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Section 1 of the "Coin-Operated Amusement 46
2 Device Tax Act", approved July 7, 1953, as amended. 48

3 Be it enacted by the People of the State of Illinois, 52
4 represented in the General Assembly:

5 Section 1. Section 1 of the "Coin-Operated Amusement 54
6 Device Tax Act", approved July 7, 1953, as amended, is 55
7 amended to read as follows:

(Ch. 120, par. 481b.1) 57

8 Sec. 1. There hereby is imposed, on the privilege of 59
9 operating every coin-in-the-slot-operated amusement device in 60
10 this State which returns to the player thereof no money or 61
11 property or right to receive money or property, an annual 62
12 privilege tax of \$10.00 for each device coin-receiving--slot.

85rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL SIX

SYNOPSIS: (Ch. 120, par. 453.9)

Amends the Cigarette Tax Act to delete the requirement that distributors who do not manufacture cigarettes show in their monthly returns the quantity of cigarettes manufactured.

LRB8301513THsb

A BILL FOR

1	AN ACT to amend Section 453.9 of the "Cigarette Tax Act",	48
2	approved June 2, 1941, as amended.	50
3	<u>Be it enacted by the People of the State of Illinois,</u>	54
4	<u>represented in the General Assembly:</u>	
5	Section 1. Section 453.9 of the "Cigarette Tax Act",	56
6	approved June 2, 1941, as amended, is amended to read as	57
7	follows:	
	(Ch. 120, par. 453.9)	59
3	Sec. 9. Every distributor who is required to procure a	61
9	license under this Act, but who is not a manufacturer of	62
10	cigarettes in original packages which are contained in a	63
11	sealed transparent wrapper, shall, on or before the 15th day	64
12	of each calendar month, file a return with the Department,	65
13	showing the quantity of cigarettes manufactured during the	
14	preceding calendar month; the quantity of cigarettes brought	66
15	into this State or caused to be brought into this State from	67
16	outside this State during the preceding calendar month	68
17	without authorized evidence on the original packages of such	69
18	cigarettes underneath the sealed transparent wrapper thereof	70
19	that the tax liability imposed by this Act has been assumed	
20	by the out-of-State seller of such cigarettes, the quantity	71
21	of cigarettes purchased tax-paid during the preceding	72
22	calendar month either within or outside this State and the	73
23	quantity of cigarettes sold or otherwise disposed of during	74
24	the preceding calendar month. Such return shall be filed upon	75
25	forms furnished and prescribed by the Department and shall	
26	contain such other information as the Department may	76
27	reasonably require.	
28	Illinois manufacturers of cigarettes in original packages	78
29	which are contained inside a sealed transparent wrapper shall	79
30	file a return by the 5th day of each month covering the	80
31	preceding calendar month. Each such return shall be	81
32	accompanied by the appropriate remittance for tax as provided	82

1 in the last paragraph of Section 3 of this Act. Each such 32
2 return shall show the quantity of such cigarettes 33
3 manufactured during the period covered by the return, the 34
4 quantity of cigarettes sold or otherwise disposed of during 35
5 the period covered by the return and such other information 36
6 as the Department may lawfully require. Such returns shall be
7 filed on forms prescribed and furnished by the Department. 37
8 Each such return shall be accompanied by a copy of each 38
9 invoice rendered by such manufacturer to any purchaser to 39
10 whom such manufacturer delivered cigarettes (or caused 40
11 cigarettes to be delivered) during the period covered by the 41
12 return. 42



83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____ BY

BILL SEVEN

SYNOPSIS: (Ch. 43, par. 159a; Ch. 120, pars. 453.9d, 467.6, 467.21 and 473)

Amends the Liquor Control Act of 1934, the Messages Tax Act, the Gas Revenue Tax Act, the Public Utilities Revenue Act and the Cigarette Tax Act. Provides that tax refunds or credit memoranda issued by the Department of Revenue under those Acts earn interest at the rate of 1/2% per month from the date of the erroneous payment.

LRB8301503RLjw

Fiscal Note Act
may be available

A BILL FOR

1 A: ACT relating to interest on certain tax refunds and 43
2 credit memoranda and amending certain Acts herein named. 50

3 Be it enacted by the People of the State of Illinois, 54
4 represented in the General Assembly:

5 Section 1. Section 3-3 of "The Liquor Control Act of 55
6 1934", approved January 31, 1934, as amended, is amended to 57
7 read as follows:

 (Ch. 43, par. 159a) 59

8 Sec. 3-3. If it appears, after claim therefor filed with 61
9 the Department, that an amount of tax or penalty or interest 62
10 has been paid which was not due under this Article, whether 63
11 as the result of a mistake of fact or an error of law, except 64
12 as hereinafter provided, then the Department shall issue a 65
13 credit memorandum or refund to the person who made the 66
14 erroneous payment or, if that person has died or become 66
15 incompetent, to his legal representative, as such. 67

16 If it is determined that the Department should issue a 69
17 credit or refund under this Article, the Department may first 70
18 apply the amount thereof against any amount of tax or penalty 71
19 or interest due hereunder from the person entitled to such 72
20 credit or refund. For this purpose, if proceedings are 73
21 pending to determine whether or not any tax or penalty or 74
22 interest is due under this Article from such person, the 74
23 Department may withhold issuance of the credit or refund 75
24 pending the final disposition of such proceedings, and may 76
25 apply such credit or refund against any amount found to be 77
26 due to the Department as a result of such proceedings. The 77
27 balance, if any, of the credit or refund shall be issued to 78
28 the person entitled thereto. 79

29 If no tax or penalty or interest is due and no proceeding 81
30 is pending to determine whether such taxpayer is indebted to 82
31 the Department for tax or penalty or interest the credit 83
32 memorandum or refund shall be issued to the claimant; or (in 84

1 the case of a credit memorandum) the credit memorandum may be 85
 2 assigned and set over by the lawful holder thereof, subject
 3 to reasonable rules of the Department, to any other person 86
 4 who is subject to this Article, and the amount thereof shall 87
 5 be applied by the Department against any tax or penalty or 88
 6 interest due or to become due under this Article from such 89
 7 assignee.

8 As to any claim filed hereunder with the Department on 90
 9 and after each January 1 and July 1, no amount of tax or 91
 10 penalty or interest, erroneously paid (either in total or 92
 11 partial liquidation of a tax or penalty or interest under 93
 12 this Article) more than 3 years prior to such January 1 and 94
 13 July 1, respectively, shall be credited or refunded. 95

14 Any credit or refund that is allowed under this act shall 96
 15 bear interest at the rate of 1/2 of 1% per month or fraction 97
 16 thereof from the date when the erroneous payment for which 98
 17 the credit or refund is being allowed was made to the 99
 18 Department until the credit memorandum is issued or the 100
 19 refund is paid.

20 In case the Department determines that the claimant is 101
 21 entitled to a refund, such refund shall be made only from 102
 22 such appropriation as may be available for that purpose. If 103
 23 it appears unlikely that the amount appropriated would permit 104
 24 everyone having a claim allowed during the period covered by 105
 25 such appropriation to elect to receive a cash refund, the 106
 26 Department, by rule or regulation, shall provide for the 107
 27 payment of refunds in hardship cases and shall define what 108
 28 types of cases qualify as hardship cases. 109

29 Section 2. Section 9d of the "Cigarette Tax Act", 110
 30 approved July 25, 1945, as amended, is amended to read as 111
 31 follows: 112

(Ch. 120, par. 453.9d) 113

32 Sec. 9d. If it appears, after claim therefor filed with 114
 33 the Department, that an amount of tax or penalty has been 115
 34 paid which was not due under this Act, whether as the result 116

1 of a mistake of fact or an error of law, except as 121
 2 hereinafter provided, then the Department shall issue a
 3 credit memorandum or refund to the person who made the 122
 4 erroneous payment or, if that person has died or become 123
 5 incompetent, to his legal representative, as such.

6 If it is determined that the Department should issue a 125
 7 credit or refund under this Act, the Department may first 126
 8 apply the amount thereof against any amount of tax or penalty 127
 9 due under this Act or under the Cigarette Use Tax Act from 128
 10 the person entitled to such credit or refund. For this 129
 11 purpose, if proceedings are pending to determine whether or
 12 not any tax or penalty is due under this Act or under the 130
 13 Cigarette Use Tax Act from such person, the Department may 131
 14 withhold issuance of the credit or refund pending the final 132
 15 disposition of such proceedings and may apply such credit or 133
 16 refund against any amount found to be due to the Department
 17 under this Act or under the Cigarette Use Tax Act as a result 134
 18 of such proceedings. The balance, if any, of the credit or 135
 19 refund shall be issued to the person entitled thereto. 136

20 If no tax or penalty is due and no proceeding is pending 138
 21 to determine whether such taxpayer is indebted to the 139
 22 Department for tax or penalty, the credit memorandum or 140
 23 refund shall be issued to the claimant; or (in the case of a 141
 24 credit memorandum) the credit memorandum may be assigned and
 25 set over by the lawful holder thereof, subject to reasonable 142
 26 rules of the Department, to any other person who is subject 143
 27 to this Act or the Cigarette Use Tax Act, and the amount 144
 28 thereof shall be applied by the Department against any tax or 145
 29 penalty due or to become due under this Act or under the 146
 30 Cigarette Use Tax Act from such assignee.

31 As to any claim filed hereunder with the Department on 148
 32 and after each January 1 and July 1, no amount of tax or 149
 33 penalty erroneously paid (either in total or partial 150
 34 liquidation of a tax or penalty under this Act) more than 3 151
 35 years prior to such January 1 and July 1, respectively, shall

1 be credited or refunded. 152

2 Any credit or refund that is allowed under this Act shall 154

3 bear interest at the rate of 1/2 of 1% per month or fraction 155

4 thereof from the date when the erroneous payment for which 156

5 the credit or refund is being allowed was made to the 157

6 Department until the credit memorandum is issued or the

7 refund is paid.

8 In case the Department determines that the claimant is 159

9 entitled to a refund, such refund shall be made only from 160

10 such appropriation as may be available for that purpose. If 161

11 it appears unlikely that the amount appropriated would permit 162

12 everyone having a claim allowed during the period covered by 163

13 such appropriation to elect to receive a cash refund, the 164

14 Department, by rule or regulation, shall provide for the

15 payment of refunds in hardship cases and shall define what 165

16 types of cases qualify as hardship cases. 166

17 If the Department approves a claim for the physical 169

18 replacement of cigarette tax stamps, the Department (subject 169

19 to the same limitations as those provided for hereinbefore in 170

20 this Section) may issue an assignable credit memorandum or 171

21 refund to the claimant or to the claimant's legal 172

22 representative.

23 The provisions of Sections 6a, 6b and 6c of the 174

24 "Retailers' Occupation Tax Act", approved June 28, 1933, as 175

25 amended, in effect on the effective date of this amendatory 176

26 Act, as subsequently amended, which are not inconsistent with 177

27 this Act, shall apply, as far as practicable, to the subject 178

28 matter of this Act to the same extent as if such provisions

29 were included herein. - - - 180

30 Section 3. Section 6 of "The Messages Tax Act", approved 182

31 July 24, 1945, as amended, is amended to read as follows: 183

(Ch. 120, par. 467.6) 185

32 Sec. 6. If it appears, after claim therefor filed with 188

33 the Department, that an amount of tax or penalty or interest 189

34 has been paid which was not due under this Act, whether as 190

1 the result of a mistake of fact or an error of law, except as 191
2 hereinafter provided, then the Department shall issue a
3 credit memorandum or refund to the person who made the 192
4 erroneous payment or, if that person has died or become 193
5 incompetent, to his legal representative, as such. 194

6 If it is determined that the Department should issue a 195
7 credit or refund under this Act, the Department may first 197
8 apply the amount thereof against any amount of tax or penalty 195
9 or interest due hereunder from the person entitled to such 199
10 credit or refund. For this purpose, if proceedings are 200
11 pending to determine whether or not any tax or penalty or
12 interest is due under this Act from such person, the 201
13 Department may withhold issuance of the credit or refund 202
14 pending the final disposition of such proceedings and may 203
15 apply such credit or refund against any amount found to be
16 due to the Department as a result of such proceedings. The 204
17 balance, if any, of the credit or refund shall be issued to 205
18 the person entitled thereto.

19 If no tax or penalty or interest is due and no proceeding 207
20 is pending to determine whether such person is indebted to 203
21 the Department for tax or penalty or interest, the credit 209
22 memorandum or refund shall be issued to the claimant; or (in 210
23 the case of a credit memorandum) the credit memorandum may be 211
24 assigned and set over by the lawful holder thereof, subject
25 to reasonable rules of the Department, to any other person 212
26 who is subject to this Act, and the amount thereof shall be 213
27 applied by the Department against any tax or penalty or 214
28 interest due or to become due under this Act from such 215
29 assignee.

30 As to any claim for credit or refund filed with the 217
31 Department on or after each January 1 and July 1, no amounts 219
32 erroneously paid more than 3 years prior to such January 1 219
33 and July 1, respectively, shall be credited or refunded. 220
34 Claims for credit or refund shall be filed upon forms 222
35 provided by the Department. As soon as practicable after any 223

1 claim for credit or refund is filed, the Department shall 224
2 examine the same and determine the amount of credit or refund 225
3 to which the claimant is entitled and shall notify the 226
4 claimant of such determination, which amount shall be prima
5 facie correct.

6 Any credit or refund that is allowed under this Act shall 228
7 bear interest at the rate of 1/2 of 1% per month or fraction 229
8 thereof from the date when the erroneous payment for which 230
9 the credit or refund is being allowed was made to the 231
10 Department until the credit memorandum is issued or the
11 refund is paid.

12 In case the Department determines that the claimant is 232
13 entitled to a refund, such refund shall be made only from 234
14 such appropriation as may be available for that purpose. If 235
15 it appears unlikely that the amount appropriated would permit 236
16 everyone having a claim allowed during the period covered by 237
17 such appropriation to elect to receive a cash refund, the 238
18 Department, by rule or regulation, shall provide for the
19 payment of refunds in hardship cases and shall define what 239
20 types of cases qualify as hardship cases. 241

21 Section 4. Section 6 of "The Gas Revenue Tax Act", 242
22 approved July 24, 1945, as amended, is amended to read as 244
23 follows:

(Ch. 120, par. 467.21) 246

24 Sec. 6. If it appears, after claim therefor filed with 249
25 the Department, that an amount of tax or penalty or interest 250
26 has been paid which was not due under this Act, whether as 251
27 the result of a mistake of fact or an error of law, except as 252
28 hereinafter provided, then the Department shall issue a
29 credit memorandum or refund to the person who made the 253
30 erroneous payment or, if that person has died or become 254
31 incompetent, to his legal representative, as such. 255

32 If it is determined that the Department should issue a 257
33 credit or refund under this Act, the Department may first 258
34 apply the amount thereof against any amount of tax or penalty 259

1 or interest due hereunder from the person entitled to such 260
 2 credit or refund. For this purpose, if proceedings are 261
 3 pending to determine whether or not any tax or penalty or
 4 interest is due under this Act from such person, the 262
 5 Department may withhold issuance of the credit or refund 263
 6 pending the final disposition of such proceedings and may 264
 7 apportion such credit or refund against any amount found to be
 8 due to the Department as a result of such proceedings. The 265
 9 balance, if any, of the credit or refund shall be issued to 266
 10 the person entitled thereto.

11 If no tax or penalty or interest is due and no proceeding 268
 12 is pending to determine whether such person is indebted to 269
 13 the Department for tax or penalty or interest, the credit 270
 14 memorandum or refund shall be issued to the claimant; or (in 271
 15 the case of a credit memorandum) the credit memorandum may be 272
 16 assigned and set over by the lawful holder thereof, subject
 17 to reasonable rules of the Department, to any other person 273
 18 who is subject to this Act, and the amount thereof shall be 274
 19 applied by the Department against any tax or penalty or 275
 20 interest due or to become due under this Act from such 276
 21 assignee.

22 As to any claim for credit or refund filed with the 277
 23 Department on or after each January 1 and July 1, no amounts 278
 24 erroneously paid more than 3 years prior to such January 1 280
 25 and July 1, respectively, shall be credited or refunded. 281

26 Claims for credit or refund shall be filed upon forms 283
 27 provided by the Department. As soon as practicable after any 284
 28 claim for credit or refund is filed, the Department shall 285
 29 examine the same and determine the amount of credit or refund 286
 30 to which the claimant is entitled and shall notify the 287
 31 claimant of such determination, which amount shall be prima
 32 facie correct.

33 Any credit or refund that is allowed under this Act shall 289
 34 bear interest at the rate of 1/2 of 1% per month or fraction 290
 35 thereof from the date when the erroneous payment for which 291

1 the credit or refund is being allowed was made to the 292
 2 Department until the credit memorandum is issued or the
 3 refund is paid. 293

4 In case the Department determines that the claimant is 294
 5 entitled to a refund, such refund shall be made only from 295
 6 such appropriation as may be available for that purpose. If 296
 7 it appears unlikely that the amount appropriated would permit 297
 8 everyone having a claim allowed during the period covered by 298
 9 such appropriation to elect to receive a cash refund, the 299
 10 Department, by rule or regulation, shall provide for the
 11 payment of refunds in hardship cases and shall define what 300
 12 types of cases qualify as hardship cases. 302

13 Section 5. Section 6 of "The Public Utilities Revenue 304
 14 Act", approved March 11, 1937, as amended, is amended to read 305
 15 as follows:

(Ch. 120, par. 473) 307

16 Sec. 6. If it appears, after claim therefor filed with 310
 17 the Department, that an amount of tax or penalty or interest 311
 18 has been paid which was not due under this Act, whether as 312
 19 the result of a mistake of fact or an error of law, except as 313
 20 hereinafter provided, then the Department shall issue a
 21 credit memorandum or refund to the person who made the 314
 22 erroneous payment or, if that person has died or become 315
 23 incompetent, to his legal representative, as such. 316

24 If it is determined that the Department should issue a 318
 25 credit or refund under this Act, the Department may first 317
 26 apply the amount thereof against any amount of tax or penalty 320
 27 or interest due hereunder from the person entitled to such 321
 28 credit or refund. For this purpose, if proceedings are 322
 29 pending to determine whether or not any tax or penalty or
 30 interest is due under this Act from such person, the 323
 31 Department may withhold issuance of the credit or refund 324
 32 pending the final disposition of such proceedings and may 325
 33 apply such credit or refund against any amount found to be
 34 due to the Department as a result of such proceedings. The 326

1 balance, if any, of the credit or refund shall be issued to 327
2 the person entitled thereto.

3 If no tax or penalty or interest is due and no proceeding 329
4 is pending to determine whether such person is indebted to 330
5 the Department for tax or penalty or interest, the credit 331
6 memorandum or refund shall be issued to the claimant; or (in 332
7 the case of a credit memorandum) the credit memorandum may be 333
8 assigned and set over by the lawful holder thereof, subject
9 to reasonable rules of the Department, to any other person 334
10 who is subject to this Act, and the amount thereof shall be 335
11 apolied by the Department against any tax or penalty or 336
12 interest due or to become due under this Act from such 337
13 assignee.

14 As to any claim for credit or refund filed with the 338
15 Department on or after each January 1 and July 1, no amounts 339
16 erroneously paid more than 3 years prior to such January 1 340
17 and July 1, respectively, shall be credited or refunded. 341
342

18 Claims for credit or refund shall be filed upon forms 344
19 provided by the Department. As soon as practicable after any 345
20 claim for credit or refund is filed, the Department shall 346
21 examine the same and determine the amount of credit or refund 347
22 to which the claimant is entitled and shall notify the 348
23 claimant of such determination, which amount shall be prima 349
24 facie correct.

25 Any credit or refund that is allowed under this Act shall 350
26 bear interest at the rate of 1/2 of 1% per month or fraction 351
27 thereof from the date when the erroneous payment for which 352
28 the credit or refund is being allowed was made to the 353
29 Department until the credit memorandum is issued or the
30 refund is paid.

31 In case the Department determines that the claimant is 355
32 entitled to a refund, such refund shall be made only from 356
33 such appropriation as may be available for that purpose. If 357
34 it appears unlikely that the amount appropriated would permit 358
35 everyone having a claim allowed during the period covered by 359

1	such appropriation to elect to receive a cash refund, the	360
2	Department, by rule or regulation, shall provide for the	
3	payment of refunds in hardship cases and shall define what	361
4	types of cases qualify as hardship cases.	363



83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL EIGHT

SYNOPSIS: (Ch. 17, par. 3147)

Amends Illinois Savings and Loan Act to provide that property appraiser's qualifications and property appraisals are subject to the Commissioner's regulations; and provides that appraisals must be made by qualified appraisers or a qualified appraisal committee in a manner consistent with generally accepted appraisal practices. Effective immediately.

LRB8301506JSsb

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Section 5-13 of the "Illinois Savings and 53
 2 Loan Act", approved July 5, 1955, as amended. 55

3 Be it enacted by the People of the State of Illinois, 59
 4 represented in the General Assembly:

5 Section 1. Section 5-13 of the "Illinois Savings and 61
 6 Loan Act", approved July 5, 1955, as amended, is amended to 62
 7 read as follows:

(Ch. 17, par. 3147) 64

8 Sec. 5-13. Appraisals. (3) Every appraiser's 66
 9 qualifications and every appraisal or reappraisal of property 67
 10 which an association is required to make shall be subject to 68
 11 the regulations of the Commissioner. Appraisals shall be made 69
 12 as follows:

13 (1) ~~By an independent qualified appraiser designated by~~ 71
 14 The board of directors shall designate a qualified appraiser 72
 15 or a qualified appraisal committee to make such appraisals; 73
 16 or

17 ~~(2) by the association's appraisal committee appointed~~ 75
 18 ~~by the board of directors or~~ 76

19 (2) ~~(1)~~ In the case of an insured or guaranteed loan, by 78
 20 any appraiser appointed by any lending, insuring, or 79
 21 guaranteeing agency of the United States or the State of 80
 22 Illinois, which insures or guarantees such loan, wholly or in 81
 23 part.

24 (b) Each appraisal shall be in writing with a 83
 25 certificate signed by the appraiser or appraisers, stating 84
 26 that he or they have personally examined the described 85
 27 property, setting forth the value of the land, and the nature 86
 28 and value of the improvements, if any; which appraisal shall 87
 29 be filed and preserved by the association.

30 (c) If appraisals of real estate securing an 89
 31 association's loans are obtained as part of an examination by 90
 32 the Commissioner, the cost of such appraisals shall promptly 91

1 be paid by the association directly to the appraiser or 93
2 appraisers.

3 (d) Every appraisal shall be prepared in a manner 95

4 consistent with generally accepted appraisal practices. 97

5 Section 2. This Act takes effect upon becoming a law. 99



83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL NINE

SYNOPSIS: (Ch. 111 1/2, par. 1309)

Amends the Lead Poisoning Prevention Act. Permits the Department of Public Health, if no health hazard is imminent, to grant extensions of the 30-day period in which the owner of a dwelling must correct conditions which expose small children to lead substances.

LRB8301512JMs b

A BILL FOR

1 AN ACT to amend Section 9 of the "Lead Poisoning 48
 2 Prevention Act", approved September 5, 1973, as amended. 50

3 Be it enacted by the People of the State of Illinois, 54
 4 represented in the General Assembly:

5 Section 1. Section 9 of the "Lead Poisoning Prevention 56
 6 Act", approved September 5, 1973, as amended, is amended to 57
 7 read as follows:

(Ch. 111 1/2, par. 1309) 59

8 Sec. 9. Upon determination by the Department, or 61
 9 representative of a unit of local government or health 62
 10 department approved by the Department for this purpose, that 63
 11 there are lead-bearing substances in or upon any dwelling or 64
 12 dwelling unit which may be hazardous to children, or upon 65
 13 receipt of confirmation that an individual has a level of 66
 14 lead in his blood described in Section 7, the Department, or 67
 15 representative of a unit of local government or health 68
 16 department approved by the Department for this purpose: 68

17 (1) May cause to be posted upon the dwelling of the 70
 18 individual, or upon the dwelling or dwelling unit identified 71
 19 as containing lead-bearing substances, a notice of the 72
 20 existence of such substances, in a conspicuous place or 73
 21 places;

22 (2) May inform the local health officers of the results 75
 23 of such determination and provide suitable recommendations 76
 24 for elimination of the problem areas. 77

25 (3) May in the event that small children reside in or 79
 26 frequently inhabit the premises, notify the homeowner, the 80
 27 occupant, or their representatives that lead-bearing 81
 28 substances are present on the surfaces of the dwelling or 92
 29 dwelling unit and may constitute a hazard to the health of
 30 children:

31 (4) May notify the owner of the dwelling or dwelling 84
 32 unit in writing, or in person, advising of the existence of 35

1	such substances with instructions that these substances if	36
2	accessible to small children, shall be removed, replaced, or	37
3	securely and permanently covered within a time period not to	
4	exceed 30 days and in a manner prescribed by the Department.	38
5	<u>An extension of time may be granted by the Department if</u>	39
6	<u>there is no imminent health hazard to the occupants of the</u>	40
7	<u>dwelling.</u>	41



83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL TEN

SYNOPSIS: (Ch. 111.5, par. 151)

Amends the Hospital Licensing Act to provide that the Department of Public Health shall adopt rules which set forth standards for determining when the public interest, safety or welfare requires emergency action in relation to termination of a research program or experimental procedure conducted by a hospital.

LRB8302360ESjw

A BILL FOR

1 AN ACT to amend Section 10 of the "Hospital Licensing 49
2 Act", approved July 1, 1953, as amended. 51

3 Be it enacted by the People of the State of Illinois, 55
4 represented in the General Assembly:

5 Section 1. Section 10 of the "Hospital Licensing Act", 57
6 approved July 1, 1953, as amended, is amended to read as 58
7 follows:

(Ch. 111 1/2, par. 151) 60

8 Sec. 10. (a) The Governor shall appoint a Hospital 62
9 Licensing Board composed of 12 persons, including the 63
10 Director of Mental Health and Developmental Disabilities, ex 64
11 officio, which shall advise and consult with the Director in 65
12 the administration of this Act. Four appointive members shall
13 represent the general public and 2 of these shall be members 66
14 of hospital governing boards; one appointive member shall be 67
15 a registered professional nurse as defined in The Illinois 68
16 Nursing Act, approved June 14, 1951, as now or hereafter 59
17 amended, who is employed in a hospital; 3 appointive members
18 shall be hospital administrators actively engaged in the 70
19 supervision or administration of hospitals; 2 appointive 71
20 members shall be practicing physicians, licensed in Illinois 72
21 to practice medicine in all of its branches; and one 73
22 appointive member shall be a physician licensed to practice
23 podiatric medicine under "An Act to regulate the practice of 74
24 podiatry in the State of Illinois", approved April 26, 1917, 75
25 as amended. In making Board appointments, the Governor shall 76
26 give consideration to recommendations made through the 77
27 Director by professional organizations concerned with 78
28 hospital administration for the hospital administrative and 79
29 governing board appointments, registered professional nurse 80
30 organizations for the registered professional nurse
31 appointment, and professional medical organizations for the 81
32 physician appointments.

1 (b) Each appointive member shall hold office for a term 83
2 of 3 years, except that any member appointed to fill a 84
3 vacancy occurring prior to the expiration of the term for 85
4 which his predecessor was appointed shall be appointed for 86
5 the remainder of such term and the terms of office of the 37
6 members first taking office shall expire, as designated at
7 the time of appointment, 2 at the end of the first year, 2 at 88
8 the end of the second year, and 3 at the end of the third 89
9 year, after the date of appointment. The initial terms of 90
10 office of the 2 additional members representing the general 91
11 public provided for in this Section shall expire at the end
12 of the third year after the date of appointment. The term of 92
13 office of each original appointee shall commence July 1, 93
14 1953; the term of office of the original registered 94
15 professional nurse appointee shall commence July 1, 1967; the 95
16 term of office of the original licensed podiatrist appointee
17 shall commence July 1, 1981; and the term of office of each 96
18 successor shall commence on July 1 of the year in which his 98
19 predecessor's term expires. Board members, while serving on 99
20 business of the Board, shall receive actual and necessary
21 travel and subsistence expenses while so serving away from 100
22 their places of residence. The Board shall meet as frequently 101
23 as the Director deems necessary, but not less than once a 102
24 year. Upon request of 5 or more members, the Director shall 103
25 call a meeting of the Board.

26 (c) The Director shall prescribe rules, regulations, 105
27 standards, and statements of policy needed to implement, 106
28 interpret, or make specific the provisions and purposes of 107
29 this Act. The Department shall adopt rules which set forth 108
30 standards for determining when the public interest, safety or 109
31 welfare requires emergency action in relation to termination
32 of a research program or experimental procedure conducted by 110
33 a hospital licensed under this Act. No rule, regulation, or 111
34 standard shall be adopted by the Department concerning the 112
35 operation of hospitals licensed under this Act which has not 113

1	had prior approval of the Hospital Licensing Board, nor shall	114
2	the Department adopt any rule, regulation or standard	115
3	relating to the establishment of a hospital without	
4	consultation with the Hospital Licensing Board.	117

85rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL ELEVEN

SYNOPSIS: (Ch. 114, pars. 401 and 403)

Amends the Salvage Warehouse Act to transfer responsibility for administration of the Act from the Department of Agriculture to the Department of Public Health.

LRB8301504EGdv

A BILL FOR

1 AN ACT to amend Sections 1 and 3 of "An Act to provide 48
2 for the licensing and regulation of salvage warehouses and 49
3 salvage warehouse stores for foods, alcoholic liquors, drugs 50
4 and cosmetics", approved July 25, 1963, as amended. 52

5 Be it enacted by the People of the State of Illinois, 56
6 represented in the General Assembly:

7 Section 1. Sections 1 and 3 of "An Act to provide for the 59
8 licensing and regulation of salvage warehouses and salvage 60
9 warehouse stores for foods, alcoholic liquors, drugs and 61
10 cosmetics", approved July 25, 1963, as amended, are amended 62
11 to read as follows:

 (Ch. 114, par. 401) 64

12 Sec. 1. Definitions. As used in this Act, unless the 67
13 context otherwise requires: "Salvage Warehouse or Salvage 63
14 Warehouse Store" means any establishment, building, or 69
15 premises utilized to receive and store or redistribute
16 partially damaged food, alcoholic liquor, drugs or cosmetics 70
17 from fires, floods, storms, train wrecks, truck wrecks, 71
18 manufacturer closeouts or damaged from any other source 72
19 whatsoever. This also includes any establishment, building or
20 premises established or utilized to prepare such partially 73
21 damaged food products, drugs or cosmetics for sale or 74
22 distribution to consumers.

23 "Article of Food" means any article used for food or 76
24 drink or condiment by man whether simple, mixed or compound, 77
25 or any article used or intended for use as an ingredient in 78
26 the composition or preparation thereof.

27 "Alcoholic liquor" includes alcohol, spirits, wine and 80
28 beer, and every liquid or solid, patented or not, containing 81
29 alcohol spirits, wine or beer, and capable of being consumed 82
30 by a human being.

31 "Drug" means (1) articles recognized in the official 34
32 United States Pharmacopoeia, official Homeopathic 35

1	Pharmacopoeia of the United States, United States	36
2	Dispensatory, Remington's Practice of Pharmacy or official	37
3	National Formulary, or any supplement to any of them; (2)	
4	articles intended for use in the diagnosis, cure, mitigation,	38
5	treatment or prevention of disease; (3) articles (other than	39
6	food) intended to affect the structure or any function of the	90
7	body of man or other animals; and (4) articles intended for	91
8	use as a component of any article specified in clause (1),	
9	(2) or (3). "Drug" does not include devices or their	92
10	components, parts or accessories.	
11	"Cosmetic" means (1) articles intended to be rubbed on,	94
12	poured on, sprinkled on or sprayed on, introduced into or	95
13	otherwise applied to the human body or any part thereof for	96
14	cleansing, beautifying, promoting attractiveness or altering	97
15	the appearance; and (2) articles intended for use as a	98
16	component of any such articles, except that such term does	
17	not include soap.	99
18	An article of food, liquor, drugs or cosmetics is "For	101
19	Salvage" when it is damaged in any way and is delivered to	102
20	and comes into the possession or custody of the licensee of a	103
21	Salvage Warehouse or Salvage Warehouse Store.	
22	"Department" means the Department of <u>Public Health</u>	105
23	Architecture of the State of Illinois.	106
24	"Director" means the Director of the Department.	109
	(Ch. 114, par. 403)	111
25	Sec. 3. Revocation or suspension of license. In case any	114
26	salvage warehouse or salvage warehouse store, or any part	115
27	thereof, is at any time deemed by the Department, to be in an	
28	unsanitary condition, or not properly equipped for its	116
29	intended use, the Department shall notify the licensee of	117
30	such condition and upon the failure of the licensee to put	118
31	such salvage warehouse or salvage warehouse store in a	119
32	sanitary condition or to properly equip the same for its	
33	intended use, within a time to be designated by the Director,	120
34	the license may be revoked or suspended by the Director in	121

1	the manner provided in Sections 9 and 10 of this Act until	122
2	such licensed premises shall conform to the laws of Illinois	123
3	and the rules and regulations of the Department of <u>Public</u>	
4	<u>Health</u> Agriculture adopted under this Act.	125

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL TWELVE

SYNOPSIS:

(Ch. 121 1/2, rep. pars. 81 through 95)

An Act to repeal the Paints and Oils Act.

LRB8301505BMtc

A BILL FOR

1	AN ACT to repeal "An Act to regulate the sale of paints,	43
2	oils and other articles or compounds used in connection	44
3	therewith", approved June 21, 1917, as amended.	45
4	<u>Be it enacted by the People of the State of Illinois,</u>	49
5	<u>represented in the General Assembly:</u>	
	(Ch. 121 1/2, rep. pars. 81 through 95)	51
6	Section 1. "An Act to regulate the sale of paints, oils	53
7	and other articles or compounds used in connection	54
3	therewith", approved June 21, 1917, as amended, is repealed.	55

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____ . BY

BILL THIRTEEN

SYNOPSIS: (Ch. 122, par. 13-40)

Amends The School Code to provide that the Department of Corrections school district shall be included in the administrative structure of the Department of Corrections.

LRB8301507ESTc

A BILL FOR

1 AN ACT to amend Section 13-40 of "The School Code", 47
 2 approved March 13, 1961, as amended. 49

3 Be it enacted by the People of the State of Illinois, 53
 4 represented in the General Assembly:

5 Section 1. Section 13-40 of "The School Code", approved 55
 6 March 13, 1961, as amended, is amended to read as follows: 56
 (Ch. 122, par. 13-40) 58

7 Sec. 13-40. To increase the effectiveness of the 60
 8 Department of Corrections and thereby to better serve the 61
 9 interests of the people of Illinois the following bill is 62
 10 presented.

11 Its purpose is to enhance the quality and scope of 64
 12 education for inmates and wards within the Department of 65
 13 Corrections so that they will be better motivated and better 66
 14 equipped to restore themselves to constructive and law 67
 15 abiding lives in the community. The specific measure sought 68
 16 is the creation of a school district within the Department so 69
 17 that its educational programs can meet the needs of persons 70
 18 committed and so the resources of public education at the
 19 state and federal levels are best used, all of the same being 71
 20 contemplated within the provisions of the Illinois State 72
 21 Constitution of 1970 which provides that "A fundamental goal 73
 22 of the People of the State is the educational development of 74
 23 all persons to the limits of their capacities." Therefore, on 75
 24 July 1, 1972, a Department of Corrections school district is 76
 25 established for the education of inmates and wards within the 77
 26 Department of Corrections and the said district may establish
 27 primary, secondary, vocational, adult, special and advanced 78
 28 educational schools as provided in this Act. Such school 79
 29 district shall be included in the administrative structure of 80
 30 the Department. The Board of Education for this district 81
 31 shall with the aid and advice of professional educational 82
 32 personnel of the Department of Corrections and the State 83

1	Board of Education determine the needs and type of schools	34
2	and the curriculum for each school within the school district	35
3	and may proceed to establish the same through existing means	36
4	within present and future appropriations, federal and state	
5	school funds, vocational rehabilitation grants and funds and	37
6	all other funds, gifts and grants, private or public,	38
7	including federal funds, but not exclusive to the said	39
8	sources but inclusive of all funds which might be available	40
9	for school purposes. The school district shall first organize	
10	a school system for the Adult Division of the Department of	41
11	Corrections to go into effect July 1, 1972. A school system	42
12	for the Juvenile Division shall subsequently be organized and	43
13	put into effect under this school district at such time as	44
14	the school board shall determine necessary.	46



83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL FOURTEEN

SYNOPSIS: (Ch. 95 1/2, par. 6-411)

Amends the Vehicle Code. Provides that a driver education instructor who teaches exclusively in a commercial driving school shall not be required to furnish the Secretary of State with a State Board of Education certificate attesting to his qualification to teach driver education courses.

LRB8301508PLsb

A BILL FOR

1	AN ACT to amend Section 6-411 of "The Illinois Vehicle	47
2	Code", approved September 29, 1969, as amended.	49
3	<u>Be it enacted by the People of the State of Illinois,</u>	53
4	<u>represented in the General Assembly:</u>	
5	Section 1. Section 6-411 of "The Illinois Vehicle Code",	55
6	approved September 29, 1969, as amended, is amended to read	56
7	as follows:	
	(Cn. 95 1/2, par. 6-411)	58
8	Sec. 6-411. Qualifications of Driver Training	60
9	Instructors. In order to qualify for a license as an	61
10	instructor for a driving school, an applicant must:	
11	(a) Be of good moral character;	63
12	(b) Authorize an investigation to determine if the	65
13	applicant has ever been convicted of a crime and if so, the	66
14	disposition of those convictions; this authorization shall	67
15	indicate the scope of the inquiry and the agencies which may	68
16	be contacted. Upon this authorization the Secretary of State	
17	may request and receive information and assistance from any	69
18	federal, state or local governmental agency as part of the	70
19	authorized investigation. The Department of Law Enforcement	71
20	shall provide information concerning any criminal	72
21	convictions, and their disposition, brought against the	
22	applicant upon request of the Secretary of State when the	73
23	request is made in the form and manner required by the	74
24	Department of Law Enforcement. The information derived from	75
25	this investigation including the source of this information,	
26	and any conclusions or recommendations derived from this	76
27	information by the Secretary of State shall be provided to	77
28	the applicant, or his designee, upon request to the Secretary	78
29	of State, prior to any final action by the Secretary of State	79
30	on the application. No information obtained from such	80
31	investigation may be placed in any automated information	
32	system. Any criminal convictions and their disposition	81

1 information obtained by the Secretary of State shall be 82
2 confidential and may not be transmitted outside the Office of 83
3 the Secretary of State, except as required herein, and may
4 not be transmitted to anyone within the Office of the 84
5 Secretary of State except as needed for the purpose of 85
6 evaluating the applicant. The only physical identity
7 materials which the applicant can be required to provide the 86
8 Secretary of State are photographs or fingerprints; these 87
9 shall be returned to the applicant upon request to the 88
10 Secretary of State, after the investigation has been
11 completed and no copy of these materials may be kept by the 89
12 Secretary of State or any agency to which such identity
13 materials were transmitted. Only information and standards 91
14 which bear a reasonable and rational relation to the
15 performance of a driver training instructor shall be used by 92
16 the Secretary of State. Any employee of the Secretary of 93
17 State who gives or causes to be given away any confidential 94
18 information concerning any criminal charges and their 95
19 disposition of an applicant shall be guilty of a Class A 96
20 misdemeanor unless release of such information is authorized
21 by this Section;

22 (c) Pass such examination as the Secretary of State 98
23 shall require on (1) traffic laws, (2) safe driving 99
24 practices, (3) operation of motor vehicles, and (4) 100
25 qualifications of teacher;

26 (d) Be physically able to operate safely a motor vehicle 102
27 and to train others in the operation of motor vehicles. An 103
28 instructors license application must be accompanied by a 104
29 medical examination report completed by a competent physician 105
30 licensed to practice in the State of Illinois;

31 (e) Hold a valid Illinois drivers license; 107
32 (f) Have graduated from an accredited high school after 109
33 at least 4 years of high school education or the equivalent; 110
34 and
35 (g) Pay to the Secretary of State an application and 112

1	license fee of \$10.	112
2	If a driver training school class room instructor teaches	114
3	an approved driver education course to students under 18	115
4	years of age, he shall furnish to the Secretary of State a	116
5	certificate issued by the State Board of Education that the	117
6	said instructor is qualified and meets the minimum	
7	educational standards for teaching driver education courses	118
8	in the local public or parochial school systems, <u>except that</u>	119
9	<u>no such State Board of Education certification shall be</u>	120
10	<u>required of any instructor who teaches exclusively in a</u>	
11	<u>commercial driving school.</u>	122

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL FIFTEEN

SYNOPSIS: (Ch. 105, pars. 706.08 and 707.03)

Amends the Illinois Natural Areas Preservation Act. Requires that rules be made by the Nature Preserves Commission and approved by the Department of Conservation, rather than be made jointly by the Commission and Department.

LRB8302362JMDv

A BILL FOR

1 AN ACT to amend Sections 6.08 and 7.03 of the "Illinois
2 Natural Areas Preservation Act", approved September 15, 1981. 50

3 Be it enacted by the People of the State of Illinois, 55
4 represented in the General Assembly:

5 Section 1. Sections 6.08 and 7.03 of the "Illinois 57
6 Natural Areas Preservation Act", approved September 15, 1981, 58
7 are amended to read as follows:

(Ch. 105, par. 706.08) 60

8 Sec. 6.08. ~~To adopt rules jointly with the Department,~~ 62
9 in accordance with the "Illinois Administrative Procedure 63
10 Act", for (a) development and maintenance of the nature 64
11 preserves system; (b) selection, acquisition, management, 65
12 protection and use of dedicated and registered areas; (c)
13 dedication of land within the system; (d) registration of 66
14 areas; (e) protection of registered areas; (f) protection of 67
15 habitats of endangered, threatened or rare species; (g) 68
16 protection of geological sites; and (h) protection of 69
17 archaeological sites and artifacts. Such rules shall be
18 promulgated after consultation with and written approval by 70
19 the Department. 71

(Ch. 105, par. 707.03) 73

20 Sec. 7.03. To review and approve in writing rules 75
21 promulgated by the Commission. ~~To adopt rules jointly with~~ 76
22 the Commission. 77

APPENDIX A

ILLINOIS ADMINISTRATIVE PROCEDURE ACT

OUTLINE

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Notes on Effect of Amendments Enacted in 1981

¹Amended by PA 82-372 (HB 821), effective September 2, 1981.

²Amended by PA 82-727 "Department of Revenue Sunshine Act" (HB 1049), effective November 12, 1981.

³Added by PA 82-670 "Equal Access to Justice Act" (SB 355), effective January 1, 1982.

⁴Amended by PA 82-242 (SB 514 and PA 82-492 "Regulatory Flexibility Act" (SB 546), effective January 1, 1982.

⁵Added by PA 82-492 "Regulatory Flexibility Act" (SB 546), effective January 1, 1982.

⁶Amended by PA 82-298 (HB 1209), effective January 1, 1982.

⁷Amended by PA 82-689 (SB 508), effective July 1, 1982.

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE) This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, (3) legal opinions issued under Section 2-3.7 of The School Code, and (4) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures and (5) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act." (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981)

Section 3. DEFINITIONS) As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.09 have the meanings ascribed to them in those Sections. (PA 79-1083)

Section 3.01. AGENCY) "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE) "Contested case" means an adjudicatory proceeding, not including rate-making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER) "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07. PERSON) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES) "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE) "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of a., agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10. SMALL BUSINESS) For the purpose of this Act, "small business" means a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50

full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982)

Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES) (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)

Section 4.01 REQUIRED RULES) (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rule-making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately.

(Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. STANDARDS FOR DISCRETION) Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 80-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS FLEXIBILITY) When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

(1) Establishing less stringent compliance or reporting requirements in the rule for small businesses.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

(4) Establish performance standards to replace design or operational standards in the rule for small businesses.

(5) Exempt small businesses from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

(1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses.

(2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses.

(3) The direct notification of interested small businesses.

(4) The conduct of public hearings concerning the impact of the rule on small businesses.

(5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses. The Small Business Office may advise or assist agencies in the preparation of initial and final regulatory flexibility analyses required under this Act. The Office may also advise or assist agencies in meeting the requirements of paragraph (b) of this Section. (Added by PA 82-492, effective January 1, 1982)

Section 5. PROCEDURE FOR RULE-MAKING) (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5.01. GENERAL RULEMAKING) In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;

2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;

3. A complete description of the subjects and issues involved;

4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and

5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under

paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982)

Section 5.02 EMERGENCY RULEMAKING) "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that

an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979)

Section 5.03. PEREMPTORY RULEMAKING) "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979)

Section 6. FILING OF RULES) (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a

rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.

2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES) (a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

(b) If an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed with the Secretary of State and published in the Illinois Register shall be satisfied by including in the text of the proposed or adopted rules a statement that the agency proposes to adopt or is adopting such federal rules with a specific citation to the Federal Register or Code of Federal Regulations where the text appears. If any agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text thereof be filed with the Secretary of State and published in the Illinois Register shall be satisfied by including in the text of the proposed or adopted rules a specific citation to the standards or guidelines and filing with the Secretary of State a photographic or other reproduction of such standards or guidelines. However, if the set of standards or guidelines is available in the Illinois State Library, the Secretary of State shall waive the requirement of filing a photographic or other reproduction of such standards or guidelines. This Section shall not permit an agency to adopt future amendments in the rules, standards or guidelines without following the procedures required by this Act. Adoption by reference under this Section is limited to the adoption of rules, standards or guidelines as of a certain date which the agency shall specify when the text is filed with the Secretary of State and published in the Illinois Register. Nothing in this Section shall relieve the agency of the requirement that the full text of adopted rules, including federal rules, standards and guidelines adopted by reference as provided in this Section, be filed in the agency's principal office under Section 6 of this Act. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982)

Section 7. PUBLICATION OF RULES) (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1,

1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01 (a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code on or before January 1, 1985, and shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980)

Section 7.01. CERTIFICATION) (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES) (a) The Joint Committee on Administrative Rules is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The Chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of the same house of the General Assembly. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices.

(f) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981)

Section 7.03. OATHS; AFFIDAVITS; SUBPOENA) (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE) The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

- a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

- b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

- c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or

repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE) The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule-making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule-making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule-making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. JOINT COMMITTEE OBJECTION TO PROPOSED RULE-MAKING) (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after notice of proposed rulemaking has been received by the Joint Committee, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;

2. withdraw the proposed rule, amendment, or repealer in its entirety, or;

3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the

Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06a. LEGISLATIVE VETO OF PROPOSED RULEMAKING) (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a Joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. JOINT COMMITTEE OBJECTION TO EXISTING RULE) (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. LEGISLATIVE SUSPENSION OF EMERGENCY AND PEREMPTORY RULES) (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the

180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION BY JOINT COMMITTEE) (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section, the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)

Section 7.09. JOINT COMMITTEE RULE-MAKING) The Joint Committee shall have the authority to adopt to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT BY JOINT COMMITTEE) The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year. (Added by PA 80-1035, effective September 27, 1977)

Section 8. PETITION FOR ADOPTION OF RULES) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083)

Section 9. DECLARATORY RULINGS BY AGENCY) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

Section 10. CONTESTED CASES; NOTICE; HEARING) (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES) (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 14 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083)

Section 12. RULES OF EVIDENCE; OFFICIAL NOTICE) In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be

excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION) Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES OF CONTESTING AGENCY ACTION) (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 41 of the Civil Practice Act, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982)

Section 15. EX PARTE CONSULTATIONS) Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES) (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the

agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING) Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

Section 18. WAIVER) Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE) This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 210
GENERAL POLICIES

Section	
210.100	Definitions
210.200	Committee Function
210.300	Consultation with Agencies
210.400	Cooperation with the Rules Division
210.450	Publication of Notice and Hearing Dates
210.500	Use of Subpoenas

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.01 and 7.02— 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1005.01 and 1007.02 — 1007.10).

SOURCE: 3 Ill. Reg. no. 3, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 210.100 Definitions

As used in these rules (Parts 210 through 260):

"Act" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1001 et. seq., as amended).

"Committee" means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.

"Director" means the Executive Director of the Committee.

"Register" means the Illinois Register which is published weekly by the Secretary of State. It contains notices and the text of all proposed and adopted rules.

"Rules Division" means the unit in the office of the Secretary of State which files rules and publishes the Register.

Section 210.200 Committee Function

The committee will fulfill its function of *promoting adequate and proper rules by agencies and understanding on the part of the public respecting such rules* and its responsibility to review rules and rulemaking. It will seek to cooperate with agencies as much as possible. It will conduct its hearings to promote full and open discussion of rules and rulemaking. This policy is meant to implement the spirit as well as the letter of the Act.

Section 210.300 Consultation with Agencies

Some agencies may have some problems implementing or complying with the rulemaking procedures of the Act. The Committee and its staff will discuss these types of problems with agencies. Such consultation will be used to advise agencies about form, statutory authority, or other matters which are considered by the Committee in its review of rules and rulemaking.

Section 210.400 Cooperation with the Rules Division

The Rules Division has the functions under the Act of filing rules and of publishing the Register. The Committee will cooperate fully with the Rules Division. The Committee will strive to establish a good working relationship with the Rules Division to insure a smooth and efficient rulemaking process. The Committee's procedures will be coordinated with the Rules Division's "Rules on Rules" (see 1 Ill. Adm. Code 160).

Section 210.450 Publication of Notice and Hearing Dates

The Committee shall each week *submit for publication in the Register a list of the second notices received during the preceding week. The list will include the date on which the notice was received and the date of the meeting at which the Committee intends to consider the proposed rulemaking.* The list is intended only to inform the public and shall not preclude the Committee from considering or acting on the rulemaking at a different hearing. The Committee shall try to give reasonable notice of any change in the date of its intended consideration of rules to the affected agencies.

(Source: Added at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 210.500 Use of Subpoenas

- a) The Committee is granted subpoena power by Section 7.03(b) of the Act. This power will be used only when an agency refuses:
 - 1) To appear before a Committee hearing.
 - 2) To provide information which is essential to the Committee's functions.
 - 3) To produce records or documents known to exist which are essential to the Committee's functions.
- b) Prior to the use of its subpoena power, the Committee will:
 - 1) Notify the agency head of the refusal and the fact that a subpoena may be used.
 - 2) Allow the agency to present its reasons for the refusal.
- c) The Director will issue a subpoena only when approved by all of the officers of the Committee or by a vote of the Committee.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 220
REVIEW OF PROPOSED RULEMAKING

Section	
220.100	Definitions
220.200	Preliminary Review
220.250	Committee Request for Agency Hearing
220.300	Request for Economic Analysis
220.400	Format of Economic Analysis
220.500	Second Notice: Required Information
220.600	Second Notice: Additional Information
220.700	Staff Review
220.800	Committee Hearing
220.900	Criteria for Review
220.950	Filing Prohibition Criteria
220.1000	Objection: Filing Prohibition; Notice of No Objection
220.1100	Certification of Objection; Statement of Specific Objections
220.1200	Response to Objection: Deadline, Format
220.1300	Response to Objection: Manner
220.1350	Certification of Filing Prohibition; Statement of Specific Objections
220.1400	Review of Response to Objection
220.1500	Failure to Respond
220.1600	Limit of Substantive Changes
220.1700	Recommend Legislation

AUTHORITY: Authorized by Section 7.09 and implementing Sections 4.03, 5.01, 7.06, and 7.06a of the Illinois Administrative Procedure Act (Ill. Rev. Stat.1979, ch. 127, pars. 1004.03, 1005.01, 1007.06, 1007.06a, 1007.09).

SOURCE: 3 Ill. Reg. no. 8, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 220.100 Definitions

As used in this part:

"*First notice*" means the notice of proposed rulemaking which must be given to the public by agencies pursuant to Section 5.01(a) of the Act. This notice is published in the Register.

"*First notice period*" means the period of time for public comment which begins on the day the first notice appears in the Register. This period must be at least 45 days in length.

"*Second notice*" means the notice of proposed rulemaking which must be given by agencies to the Committee pursuant to Section 5.01(b) of the Act. This notice must contain the information required by Section 220.500 of this part and should also contain the information requested by Section 220.600 of this part.

"*Second notice period*" means that period of time established by the Act for Committee review of proposed rulemaking. This period must follow the end of the first notice period. It commences on the day the second notice is received by the Committee and will not be more than 45 days in length.

Section 220.200 Preliminary Review

In the first five days after the first notice, the agency may request in writing that the Committee conduct an informal review of the agency's proposed rulemaking. When such a review is made, the Committee staff will review the proposed rulemaking, including the notice and the text. The Committee staff may raise questions or problems as a result of its review, and will discuss these questions or problems with the agency. This review will be based on the criteria in Section 220.900 and Section 220.950. Such review will be in addition to the normal review which is discussed in Sections 220.500 and 220.700.

(Source: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 220.250 Committee Request for Agency Hearing

In the first 14 days after the first notice, the Committee or its Chairman may ask the agency to hold a public hearing on the proposed rulemaking. This request will be made in writing by the Director. Such a request may be made if the Chairman or the Committee *finds that a public hearing would make it easier for persons or groups to submit views and comments that might not otherwise be submitted* and instructs the Director to make such a request.

(Source: Added at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.300 Request for Economic Analysis

In the first 30 days after the first notice, the Committee may request from the agency *an analysis of the economic and budgetary effects of the proposed rulemaking*. This request will be made in writing by the Director. The request will be made in each case unless it is clear that the effects in the areas outlined in the next section will not be substantial. The Committee will consider the information in the first notice and other available information in deciding whether or not to make this request.

Section 220.400 Format of Economic Analysis

If the Committee requests an analysis of the economic effects of the proposed rulemaking, the agency shall submit the analysis in writing to the Committee as part of the second notice. The analysis shall be in the form shown in Illustration A. It must include a discussion of at least these factors and an estimate of the effects of each factor in dollars:

- a) *Any direct economic effect on the persons who will be regulated by the rule.*
- b) *Any effect on the agency's budget.*
- c) *Any effect on the budgets of other State agencies.*
- d) *Any effect on State revenue.*

Section 220.500 Second Notice: Required Information

- a) *The second notice period will start on the day the second notice is received by the Committee. It will end 45 days later unless prior to that time the agency receives either:*
 - 1) *A statement of objection from the Committee. The agency may not adopt the rulemaking in this case until after it responds to the objection.*
 - 2) *A notice from the Committee stating that no objection will be issued.*
- b) *The second notice must contain at least the following information:*
 - 1) *The name of the agency.*
 - 2) *The title of the proposed rulemaking.*
 - 3) *The date of the first notice.*
 - 4) *The text and location of any changes made in the rule during the first notice period.*
 - 5) *A final regulatory flexibility analysis, which shall include the following:*
 - A) *A summary of the issues raised by small businesses during the first notice period.*
 - B) *A description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized.*
 - 6) *If requested by the Committee as provided in Section 220.300, an analysis of the economic and budgetary effects of the proposed rulemaking.*
 - 7) *A response to any recommendations made by the State Library for changes in the rules to make them comply with the codification scheme.*
 - 8) *The name of the person who will respond to Committee questions regarding the proposed rulemaking for the agency.*
- c) *The second notice should be clearly identified as such, and shall be submitted to the Director at the following address:*

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500

Springfield, Illinois 62701

- d) In two working days after the receipt by the Committee of a second notice, the Committee will notify the Rules Division and the agency of the date on which the second notice period started. Notices which do not contain all of the information required by this section and by Section 5.01(b) of the Act will not be accepted by the Committee. An agency which submits such a notice will be informed in writing of the specific reasons the notice was not accepted.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.500 Second Notice: Additional Information

The agency should include the following information in the second notice at the time it is sent to the Committee. These items are in addition to the items which must be included in the second notice under Section 220.500.

- a) *An evaluation of all of the comments on the proposed rulemaking received by the agency from interested persons during the first notice period. This evaluation should not include any questions raised by the Committee in a preliminary review (see Section 220.200). This evaluation should include:*
 - 1) The date of any public hearing held during the first notice period and, if the hearing was held in response to a request for a hearing, the name of the person or group which made the request.
 - 2) A list of all of the persons and groups which made comments or which requested the opportunity to make comments.
 - 3) A list of all of the specific criticisms and suggestions which were raised in the comments.
 - 4) The agency's evaluation of each of the specific criticisms and suggestions.
 - 5) A statement that the agency has considered all of the comments which were received during the first notice period.
- b) *An analysis of the expected effects of the proposed rulemaking, which should include at least these items:*
 - 1) Impact on the public.
 - 2) Changes in the agency's programs or structure which will result from the rule.
- c) Where the agency's proposed rule or amendment to an existing rule may have an impact on small business, a brief statement describing the methods used by the agency to comply with Section 4.03 of the Act.
- d) *A justification and rationale for the proposed rulemaking, which should include at least these items:*
 - 1) Changes in statutory language which require the rulemaking.

- 2) Changes in agency policy, procedures, or structure which require the rulemaking.
- 3) Other rules and proposed rules of the agency, which relate to the rulemaking.
- 4) Federal laws, rules, or funding requirements, which may affect the rulemaking.
- 5) Court orders or rulings which relate to the rulemaking.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.700 Staff Review

The Committee staff will review each second notice which is received as provided in Section 220.500. The items outlined in Section 220.600 will be included in the review. This staff review will be based on the criteria in Section 220.900 and Section 220.950. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee, and may develop a recommendation for action by the Committee. The staff may recommend that the Committee issue an objection, prohibit filing of the rulemaking, develop legislation, take some other action, or take no action. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of proposed rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 220.800 Committee Hearing

The Committee will hold full and open hearings at least once each month on proposed rulemaking. The agenda for each hearing will be published as soon as possible prior to the hearing in the Register. Oral testimony will be taken at the hearing from the agency. Written comments will be considered from persons or groups which are affected by the rules as they relate to the criteria in Section 220.900 or Section 220.950. Such written comments should be sent to the Director at the following address:

Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701

Comments should be received at least three working days prior to the hearing. The Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided to the agency.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.900 Criteria for Review

The Committee will consider these criteria in its review of each proposed rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?

- 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
- 1) Does it comply with Section 5.01 of the Act?
 - 2) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 3) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
 - 4) Does it comply with the agency's own rules for its rulemaking process?
 - 5) Was the agency responsive to public comments which were made on the rulemaking?
 - 6) Did the agency comply with Section 4.03 of the Act, if applicable, in connection with the rulemaking?

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.950 Filing Prohibition Criteria

If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, the Committee will then consider the following criteria:

- a) Is the rulemaking a *serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.

- 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to public welfare*? In considering this questions, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source: Added at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 220.1000 Objection; Filing Prohibition; Notice of No Objection

- a) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, *the Committee will object to the proposed rulemaking.*
- b) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900 and also finds that the rulemaking meets one or more of the criteria in Section 220.950, the Committee will prohibit the filing of the proposed rulemaking. The prohibition will be limited to the portion of the proposed rulemaking which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*
- c) If the committee does not make such finding, *the Committee may notify the agency in writing that no objection will be issued.* Such a notice will be mailed to the agency in the first two working days after the day of the Committee hearing on the proposed rulemaking. Such notification will be made unless either:
 - 1) The second notice period has expired.
 - 2) The Committee finds, at the time of the hearing, that additional information is necessary in order to fully review the rulemaking.
- d) Upon receiving such notice that no objection will be issued, the agency may proceed to adopt the proposed rulemaking.

- e) A notice of no objection which is issued by the Committee should not be taken as implying approval in any way of the content of the rulemaking.

(Source: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 220.1100 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a proposed rulemaking, *it shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration B. *The certification shall include a statement of the specific objections of the Committee to the proposed rulemaking.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 220.1200 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 30 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration C.

Section 220.1300 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the proposed rulemaking to meet all of the specific objections stated by the Committee. The complete text of the rules including all of the changes should be included in the response.*
- b) *Withdraw the proposed rulemaking.* The agency should state the specific objections of the Committee or other reasons which are the basis of the withdrawal.
- c) *Refuse to modify or withdraw the proposed rulemaking.* The agency should present in its response its reasons for refusing to modify or withdraw the proposed rulemaking.

Section 220.1350 Certification of Filing Prohibition; Statement of Specific Objections

- a) If the Committee prohibits the filing of a proposed rulemaking, *it shall certify the prohibition to the agency and the Secretary of State*. Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration D. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the proposed rulemaking.
- b) A notice of filing prohibition which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.

- c) The proposed rulemaking may not be filed with the Rules Division for at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the rulemaking.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the prohibition. The action will be taken as soon as practicable after the certification of prohibition.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of permanently prohibiting the agency from filing the proposed rulemaking.

(Source: Added at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 220.1400 Review of Response to Objection

The Committee will review each of the responses to its objections which are made by agencies. If an agency modifies a proposed rulemaking to meet the specific objections of the Committee, the Committee will examine each of the specific changes made to meet the objections. *If the Committee finds that the changes do not remedy the objections, it will so notify the agency. It will also submit a copy of such a notice to the Rules Division to be published in the Register.* The notice will include a statement of the reasons the Committee found that the changes do not remedy the objections.

Section 220.1500 Failure to Respond

If the Committee does not receive a response to an objection from the agency within 90 days after the receipt of the objection by the agency, the rulemaking will be withdrawn by operation of law. Following the end of the 90 days, the Director will send a notice of the fact of the withdrawal to the Rules Division. The notice will state that (1) the agency has failed to respond within the 90 days, and (2) the rulemaking has been withdrawn by operation of law. The date on which the rulemaking will be withdrawn is the day after the last day of the 90 day period. The agency may not adopt a rulemaking which has been withdrawn.

Section 220.1600 Limit of Substantive Changes

After the start of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Committee. The Committee will review the text of adopted rules to insure that substantive changes have not been made in violation of this provision of the Act.

Section 220.1700 Recommend Legislation

The Committee may draft legislation as a result of its review of proposed rulemaking. The purpose of such legislation will be to provide authority, for the rulemaking, to resolve conflicts between the rules and statutes, to clarify the intent of acts which require the rulemaking, or to deal with other issues which are discovered in its review. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 230
REVIEW OF EMERGENCY RULEMAKING

Section	
230.100	Basic Policy
230.200	Definition
230.300	Staff Review
230.400	Primary Criteria for Review
230.500	Secondary Criteria for Review
230.550	Suspension Criteria
230.600	Objection; Suspension
230.700	Certification of Objection; Statement of Specific Objections
230.800	Response to Objection: Deadline, Format
230.900	Response to Objection: Manner
230.1000	Failure to Respond
230.1100	Certification of Suspension; Statement of Specific Objections

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.02 and 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981.

Section 230.100 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5.02 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency process must be limited. The process should only be used in a situation which *reasonably constitutes a threat to the public interest, safety or welfare, and requires the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Act.*
- b) The Committee is empowered by Section 7.07 of the Act to *examine any rule*. The Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to insure that the use of the process is limited to only those situations which meet the requirements of Section 5.02 of the Act. The criteria which are used in this review are stated in Sections 230.400, and 230.500 and 230.550 of this part.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.200 Definition

As used in this part, "*emergency rulemaking*" means both the process of adopting a rule as provided in Section 5.02 of the Act and the rule which is adopted by that process.

Section 230.300 Staff Review

The Committee staff will review each emergency rulemaking, including both the notice and the text of the rulemaking. This review will be based on the criteria in Sections 230.400, and 230.500 and 230.550 of this part. The Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of emergency rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.400 Primary Criteria for Review

The Committee will first consider these criteria in its review of emergency rulemaking:

- a) Does the agency's statement of the need for the emergency rulemaking show that it complies with Section 5.02 of the Act? The statement must show that *a situation exists which reasonably constitutes a threat to the public interest, safety or welfare and which requires the adoption of the rule upon fewer days' notice than is required by Section 5.01 of the Act.*

- b) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- c) Is the rulemaking limited to what is required by the emergency? It should contain no provisions which are not required to meet the emergency.
- d) Did the agency take actions to make the emergency rulemaking known to the persons who may be affected by it?
- e) Has the agency adopted the same rules, or rules which have *substantially the same purpose and effect*, through the use of the emergency process in the past 24 months?

Section 230.500 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 230.400, the Committee will then consider these criteria in its review of each emergency rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
 - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
 - 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
 - 3) Does it comply with the agency's own rules for its rulemaking process?

Section 230.550 Suspension Criteria

If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
- 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
- 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to the public welfare*? In considering this questions, the Committee will examine:
- 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.600 Objection; Suspension

- a) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, *it will object to the rules*. The fact that the Committee does not object to a rulemaking should not be taken as implying approval in any way of the content of the rulemaking.
- b) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500 and also finds that the rulemaking meets one or more of the criteria in Section 230.600, the Committee will suspend the emergency rules. The suspension will be limited to the portion of the emergency rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.700 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to an emergency rulemaking, it *shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 230.800 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

Section 230.900 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the emergency rulemaking to meet all of the specific objections stated by the Committee.* The complete text of the rules including all of the changes should be included in the response. These changes may be made by submitting a notice with the changes to the Rules Division to be published in the Register. Modifying emergency rules by publishing such a notice will not be deemed to be a new rulemaking. It will not extend the 150 day effective period of the rules, nor will it be deemed to violate the provision of the Act which prohibits adoption of the same emergency rules twice.
- b) *Repeal the emergency rulemaking.* This may be done by submitting a notice to the Rules Division as provided in Section 160.1350 of the Rules on Rules (1 Ill. Adm. Code 160.1350). The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal.
- c) *Refuse to modify or repeal the emergency rulemaking.* The agency should present in its response its reasons for refusing to modify or repeal the emergency rulemaking.

Section 230.1000 Failure to Respond

Failure of an agency to respond to an objection to an emergency rule within 90 days of the receipt of the objection shall be deemed to be a refusal to modify or repeal the rule.

Section 230.1100 Certification of Suspension; Statement of Specific Objections

- a) If the Committee suspends an emergency rulemaking, it *shall certify the suspension to the agency and the Secretary of State*. Such certification will be made in the first five working

days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the emergency rules.

- b) A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The effectiveness of the emergency rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the emergency rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 240
REVIEW OF PEREMPTORY RULEMAKING

Section

240.100	Basic Policy
240.200	Definitions
240.300	Submission; Staff Review
240.400	Staff Report
240.500	Primary Criteria for Review
240.600	Secondary Criteria for Review
240.650	Suspension Criteria
240.700	Objection; Suspension
240.800	Certification of Objection; Statement of Specific Objections
240.900	Response to Objection: Format
240.1000	Response to Objection: Manner
240.1100	Rulemaking in Response to Objection
240.1200	Failure to Respond
240.1300	Certification of Suspension; Statement of Specific Objections
ILLUSTRATION A	Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking
ILLUSTRATION B	Certification of Objections to Proposed Rulemaking
ILLUSTRATION C	Agency Response to Joint Committee Objection to Proposed Rulemaking
ILLUSTRATION D	Certification of Filing Prohibition of Proposed Rulemaking
ILLUSTRATION E	Certification of Objection to Emergency or Peremptory Rules
ILLUSTRATION F	Certification of Suspension of Emergency or Peremptory Rules
ILLUSTRATION G	Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.02, 7.04 and 7.07 of the Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.04, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981.

Section 240.100 Basic Policy

- a) The fact that situations occur in which agencies are required by a federal law, federal rules and regulations, or a court order to take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, peremptory rules must be adopted under the process provided for this purpose by Section 5.03 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the peremptory process must be limited. The process should only be used in a situation which precludes the agency's compliance with the general rulemaking requirements of the Act.
- b) The Committee is empowered by Section 7.07 of the Act to *examine any rule*. The Committee will review each rule adopted through the use of peremptory rulemaking under this power. The purpose of this review is to insure that use of the process is limited to only those situations which meet the requirements of Section 5.03 of the Act. The criteria which are used in this review are stated in Sections 240.500, and 240.600 and 240.650 of this part.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.200 Definitions

As used in this part:

"Conditions which preclude compliance with the general rulemaking requirements imposed by Section 5.01 of the Act" includes only those conditions which make it impossible to comply with the notice or hearing requirements of the Act. A federal law, federal rule or regulation, or court order which merely makes it more difficult to comply or which prescribes the content of such rulemaking does not make it impossible to comply.

"Federal rules and regulations" means those rules which are or will be published in the Code of Federal Regulations.

"Peremptory rulemaking" means both the process of adopting a rule as provided in Section 5.03 of the Act and the rule which is adopted by that process.

Section 240.300 Submission; Staff Review

On the same day that a notice of peremptory rulemaking is filed with the Rules Division, the agency shall submit to the Committee a copy of the court order or specific citation of the federal law or federal rules or regulations which require the rulemaking. The staff will review the peremptory rulemaking, including the notice and the text. This staff review will be based on the criteria in Sections 240.500, and 240.600 and 240.650. The staff may raise questions or problems as a result of its review of the rulemaking, and will discuss these questions or problems with the agency.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.400 Staff Report

The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion, the staff will try to insure that the agency is aware of the substance of the recommendations.

Section 240.500 Primary Criteria for Review

The Committee will first consider these criteria in its review of peremptory rulemaking:

- a) Was the agency *precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act*, as that phrase is defined in Section 240.300 of this part?
- b) Was the agency *required to adopt rules as a direct result of federal law, federal rules and regulations, or court order*?
- c) Is the rulemaking limited to what is required by the federal law, federal rules and regulations, or court order? It should contain no provisions which are not required.
- d) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- e) Did the agency file the notice within 30 days after the change in the rules was required as required by the Act?

Section 240.600 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 240.500, the Committee will then consider these criteria in its review of each peremptory rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
 - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?

- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
 - 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
 - 3) Does it comply with the agency's own rules for its rulemaking process?

Section 240.650 Suspension Criteria.

If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to the public welfare*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.700 Objection; Suspension

- a) If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, it will object to the peremptory rules. The fact

that the Committee does not object to a rulemaking should not be taken as implying in any way approval of the content of the rulemaking.

- b) If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600 and also finds that the rulemaking meets one or more of the criteria in Section 240.650, the Committee will suspend the peremptory rules. The suspension will be limited to the portion of the peremptory rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.800 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a peremptory rulemaking, it *shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 240.900 Response to Objection: Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response shall address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

Section 240.1000 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Amend the peremptory rules to meet all of the specific objections stated by the Joint Committee.*
- b) *Repeal the peremptory rules.* The agency should state the specific objection of the Committee or other reasons which are the basis of the repeal.
- c) *Refusal to amend or repeal the peremptory rules.* The agency should present in its response its reasons for refusing to amend or repeal the rules.

Section 240.1100 Rulemaking in Response to Objection

If an agency elects to amend or repeal a rule in response to an objection, it should begin rulemaking for that purpose by giving notice as required by Section 5.01 of the Act. The Committee will give priority to rulemaking which was begun to meet an objection in setting its agenda. *The agency should complete rulemaking within 180 days after giving notice in the Register.*

Section 240.1200 Failure to Respond

Failure of an agency to respond to an objection by the Committee to a peremptory rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.

Section 240.1300 Certification of Suspension; Statement of Specific Objections

- a) If the Committee suspends a peremptory rulemaking, it shall certify the suspension to the agency and the Secretary of State. Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the peremptory rules.
- b) A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The effectiveness of the peremptory rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the peremptory rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 240.ILLUSTRATION A Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking

Agency: _____

Proposed Rulemaking: _____

1. Direct economic effect on the persons who will be regulated by the rule.

Discussion

Specific Estimated Effect

\$

2. Effect on the agency's budget.

Discussion

Specific Estimated Effect

\$

3. Effect on the budgets of other state agencies.

Discussion

Specific Estimated Effect

\$

4. Effect on State revenue.

Discussion

Specific Estimated Effect

\$

5. Other considerations relevant to the economic and budgetary effects of the proposed rulemaking.

Discussion_____
Signature of Agency Official

(See Sections 220.300, 220.400 and 220.500)

Section 240. ILLUSTRATION B Certification of Objection to Proposed Rulemaking

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), objected to _____ (Title of Rulemaking), proposed by _____ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of receipt of this Statement of Objection shall constitute withdrawal of the proposed rulemaking published in the _____ (Date) Illinois Register in its entirety.

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this _____ (Date) day of _____ (Month), 19 _____ (Year).

Notary Public

(See Section 220.1100)

Section 240. ILLUSTRATION C Agency Response to Joint Committee Objection to Proposed Rulemaking.

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____

Modification of Rulemaking to Meet Objections

Withdrawal of Rulemaking

Refusal to Modify or Withdraw

Signature of Agency Official

Agency Response to Specific Joint Committee Objections:

(Respond to each objection raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

(See Section 220.1200)

Section 240. ILLUSTRATION D Certification of Filing Prohibition of Proposed Rulemaking

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules, hereby certifies that, pursuant to Section 7.06a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting _____ (Date), prohibited the filing of _____ (Title of Rulemaking or Portion Thereof), proposed by _____ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from filing the rulemaking with the Secretary of State and from enforcing or invoking for any reason the rulemaking for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this _____ (Date) day of _____ (Month), 19 ____ (Year).

Notary Public

(See Section 220.1350)

(Source Note: Added at 5 Ill. Reg. 5164, effective May 15, 1981.)

Section 240. ILLUSTRATION E Certification of Objection to Emergency or Peremptory Rules

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), objected to the _____ (Name of Agency)'s, _____ (Emergency, Peremptory) rules entitled or concerning _____ (Title or Subject of Rules) which were published in the _____ (Date), Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure of the Agency to respond to the Joint Committee's objections to a rule within 90 days of receipt of this Certification of Objection shall constitute refusal to amend or repeal the rule.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this _____ (Date) day of _____ (Month), 19 _____ (Year).

Notary Public

(See Sections 230.600 and 240.800)

Section 240. ILLUSTRATION F Certification of Suspension of Emergency or Peremptory Rules

County of Sangamon)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.07a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), suspended the _____ (Name of Agency)'s, _____ (Emergency, Peremptory) rules entitled or concerning _____ (Title or Subject of Rules or Portion Thereof) which were published in the _____ (Date) Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from enforcing, or invoking for any reason, these rules which have been suspended and from filing with the Secretary of State any rule having substantially the same purpose and effect as these suspended rules for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified (Date).

(Signature)

(By:

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this (Date) day of (Month), 19 (Year).

Notary Public

(See Sections 230.1100 and 240.1300)

(Source Note: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240. ILLUSTRATION G Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____ Initiate rulemaking to repeal the rules to meet the Joint Committee's objection

_____ Initiate rulemaking to amend the rules to meet the Joint Committee's objection

_____ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 230.800 and 240.1000)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 250
FIVE-YEAR EVALUATION OF ALL EXISTING RULES

Section	
250.100	Authority
250.200	Relation to Other Reviews
250.300	Subject Categories
250.400	Schedule: First Year
250.500	Schedule: Second Year
250.600	Schedule: Third Year
250.700	Schedule: Fourth Year
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250.900	Notice to Agencies
250.1000	Initial Questions
250.1100	Staff Review
250.1200	Public Hearings
250.1300	Grouping of Rules
250.1400	Criteria for Review
250.1500	Staff Report; Agency Response
250.1600	Hearing on Staff Report
250.1700	Actions as Results of Review
250.1800	Actions: Objections
250.1900	Agency Response to Objection
250.2000	Failure to Respond
250.2100	Actions: Recommend Agency Action
250.2200	Recommend Legislation

AUTHORITY: Authorized by Section 7.09 and implementing Section 7.08 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.08, 1007.09).

SOURCE: 3 Ill. Reg. no. 34, page 204, effective September 1, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980.

Section 250.100 Authority

The Committee will review all agency rules on a periodic basis by the subject of the rules. Each set of rules of each agency will be evaluated during the course of this review *at least once every five years*. This review is mandated by Section 7.08 of the Act.

Section 250.200 Relation to Other Reviews.

The five-year review of all agency rules discussed in this part is in addition to the review of proposed rules of state agencies and other reviews of agency rules authorized by other provisions of the Act.

Section 250.300 Subject Categories

To insure that the Committee reviews *similar rules at the same time*, it will classify each set of rules in one of the subjects listed in Section 250.400 through 250.800. As new sets of rules are adopted, they will be classified into these subjects and the Committee will maintain a current listing of all of the rules under each subject.

Section 250.400 Schedule: First Year

In the first year of each five-year review cycle the Committee will review all of the rules classified in these subjects:

- a) Industry and Labor
 - 1) Agricultural Regulation
 - 2) Business Regulation
 - 3) Consumer Protection
 - 4) Labor Laws
 - 5) Regulation of Occupations

Section 250.500 Schedule: Second Year

In the second year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Special Education
 - 2) Vocational and Professional Education
- b) Financial Institutions
- c) Government Management
 - 1) State Buildings Construction and Maintenance
 - 2) State Travel
- d) Human Resources
 - 1) Grants for Medical Services
 - 2) Public Health

- 3) State Adult Institutions
- e) Natural Resources
 - 1) Land Pollution Control
 - 2) Wildlife Management
- f) Public Utilities

Section 250.600 Schedule: Third Year

In the third year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Grants and Scholarship Programs
 - 2) Cultural Resources
- b) Emergency Services
- c) Government Management
 - 1) Elections
 - 2) Records and Information Management
 - 3) State Financial Management
- d) Human Resources
 - 1) Food Handling and Services
 - 2) Regulation of Social Services
- e) Natural Resources
 - 1) Parks and Recreation Management
 - 2) Public Water Supplies
- f) Transportation
 - 1) Railroad Regulation

Section 250.700 Schedule: Fourth Year

In the fourth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Higher Education
 - 2) Elementary and Secondary Education
- b) Government Management
 - 1) Government Purchasing
 - 2) Personnel and Merit Systems
 - 3) Retirement Systems
- c) Human Resources

- 1) Grants for Social Services
- 2) Regulation of Health Facilities
- d) Natural Resources
 - 1) Air Pollution Control
 - 2) Energy
- e) Transportation
 - 1) Airplane and Airport Regulation
 - 2) Traffic Safety

Section 250.300 Schedule: Fifth Year

In the fifth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Facilities and Safety
- b) Government Management
 - 1) Organizational and Rulemaking Rules
 - 2) State Revenue
- c) Human Resources
 - 1) Regulation of Health Professions
 - 2) Regulation of Medical Services
 - 3) State Juvenile Institutions
- d) Law Enforcement
- e) Natural Resources
 - 1) Water Resources and Pollution Control
- f) Transportation
 - 1) Highway Planning, Construction and Maintenance
 - 2) Trucking Industry Regulation

Section 250.900 Notice to Agencies

At the beginning of each year of the review, the Committee will notify each agency whose rules will be reviewed during that year. Such notification will include the following information:

- a) The specific sets of rules which are classified in the subject which will be reviewed.
- b) The location of such rules in the collection of the agency's rules which are on file with the Rules Division.
- c) The time period during which the Committee will be reviewing such rules.

Section 250.1000 Initial Questions

The Committee will request the agency to submit the following information on each set of rules being reviewed. The agency will be allowed at least 60 days to submit this information.

- a) A citation to the specific statute which authorizes each set of rules and the specific statute which each set of rules is implementing or interpreting.
- b) A list of the programs and organizational units of the agency which are related to each set of rules.
- c) An estimate of the cost to the State for operation of the agency programs related to each set of rules and for enforcement or monitoring of compliance with the rules.
- d) An estimate of the extent of compliance and non-compliance by the affected public with each set of rules, and the number and extent of variances permitted by the agency to each set of rules.
- e) An estimate of the effect of each set of rules on state revenue.
- f) An estimate of the economic effect on the persons and groups which are regulated by each set of rules.
- g) A discussion of the public need for the regulation provided by each set of rules. This discussion should include evidence of any harm that would result to the public health, welfare or safety, if the rules were repealed.

Section 250.1100 Staff Review

The staff of the Committee will review each set of rules. Such staff review will be based on the criteria in Section 250.1400. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The agency will be allowed at least 60 days to provide written responses to any questions raised.

Section 250.1200 Public Hearings

The Committee will hold one or more public hearings during the review of the rules in each subject to gather information and views from interested persons and groups, when it finds that such a hearing is necessary for a complete review of the rules. The Chairman of the Committee may designate a subcommittee for the purpose of holding such public hearings. The agenda of such hearings shall be published in the Register as provided in Section 7.02(c) of the Act. Each agency whose rules are the subject of a public hearing will be notified of the hearing. Testimony which is presented at such hearings will be considered by the Committee in its review of the rules as it relates to the criteria in Section 250.1400.

Section 250.1300 Grouping of Rules

The Committee may further group rules together by agency, or by subject to facilitate the conduct of the review or to report the findings to the Committee.

Section 250.1400 Criteria for Review

The Committee will consider these criteria in its review of each set of rules:

a) Substantive

- 1) Is there legal authority for each part of the rules?
- 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
- 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?

b) Propriety

- 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Were the rules adopted in compliance with the Act?
- 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
- 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
- 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?

d) Additional

- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
- 2) Are the rules accurate and current in relation to agency operations and programs?
- 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 250.1500 Staff Report; Agency Response

The staff will report the results of its review to the Committee. The staff report may include recommendations for any of the types of action listed in Section 250.1700. Such recommendations shall

be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.1600 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.1400. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.1200 will also be considered.

Section 250.1700 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.1800.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such action shall be taken as discussed in Section 250.2100.
- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 250.1800 - Actions: Objections-

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.1400, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 250.1900 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and

the rationale for the response. The response should be made on the form shown in Illustration I.

- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 250.2000 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 250.2100 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration J. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

Section 250.2200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.1600 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.1400. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.1200 will also be considered.

Section 250.1700 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.1800.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such action shall be taken as discussed in Section 250.2100.
- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 250.1800 - Actions: Objections.

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.1400, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 250.1900 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and

the rationale for the response. The response should be made on the form shown in Illustration I.

- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 250.2000 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 250.2100 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration J. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

Section 250.2200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.1600 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.1400. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.1200 will also be considered.

Section 250.1700 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.1800.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such action shall be taken as discussed in Section 250.2100.
- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 250.1800 - Actions: Objections.

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.1400, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 250.1900 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and

the rationale for the response. The response should be made on the form shown in Illustration I.

- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 250.2000 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 250.2100 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration J. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

Section 250.2200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 260
COMPLAINT REVIEWS OF EXISTING RULES

Section

260.100	Authority and Purpose
260.200	Definition of Complaint
260.300	Items to be Included in Complaints
260.400	Staff Review
260.500	Complaints About Policies Not in Rules
260.600	Staff Report
260.700	Criteria for Review
260.800	Hearing by the Committee
260.900	Objection
260.1000	Agency Response to Objection
260.1100	Failure to Respond
260.1200	Recommend Legislation
260.1300	Notice to Persons Making Complaint

ILLUSTRATION H Certification of Objection to Existing Rules

ILLUSTRATION I Agency Response to Joint Committee Objection to Existing Rules

ILLUSTRATION J Certification of Recommendation

AUTHORITY: Authorized by Section 7.09 and implementing Sections 7.07 and 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, pars. 1007.04, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 34, page 219, effective August 24, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 260.100 Authority and Purpose

The Committee will review rules of state agencies based on complaints received from interested persons or groups as provided in this part. This type of review of rules is authorized by Sections 7.04 and 7.07 of the Act. Review of rules by the Committee as provided in this part is in the nature of a legislative investigation and is not a prerequisite in any way for judicial review of rules.

Section 260.200 Definition of Complaint

For the purposes of this part, a complaint will consist of any written communication received by the Committee which raises questions which are related to the criteria in Section 260.700. Complaints may address one or more of the following:

- a) An existing rule of an agency.
- b) The failure of an agency to fully or properly enforce its rules.
- c) The absence of rules which are required by statute or are necessary for the proper conduct of an agency program or function.
- d) An agency policy which is applied generally, but is not embodied in the rules of the agency.

Section 260.300 Items to be Included in Complaints

- a) Complaints should be sent to the Director at this address:
Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701
- b) Each complaint should include these items:
 - 1) A discussion of the issues involved.
 - 2) The names and addresses of the persons or groups making the complaint.
 - 3) The agency whose rules, policies, or practices are being questioned.
 - 4) The specific rule or set of rules involved.
 - 5) A description of the effect of the rules, policies or practices on the persons or groups making the complaint.
 - 6) A discussion of any additional facts necessary to understand the issues.
 - 7) A discussion of how the issues relate to the criteria in Section 260.700.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 260.400 Staff Review

The staff of the Committee will review each complaint. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. Such staff review will be based on the criteria in Section 260.700. The staff will try to insure that the agency is aware of the substance of the complaint and the results of the staff review.

Section 260.500 Complaints About Policies Not in Rules

When a complaint is received which alleges that an agency has a policy which is not embodied in rules, the Committee will encourage the persons making the complaint to petition the agency as provided in Section 8 of the Act.

Section 260.600 Staff Report

The staff shall report the results of its review to the Committee. The staff report will present evidence of possible problems with the rules in relation to the criteria in Section 260.700. The report may include recommendations for action by the Committee. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action.

Section 260.700 Criteria for Review

The Committee will consider these criteria in its review of rules based on a complaint:

a) Substantive

- 1) Is there legal authority for each part of the rules?
- 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
- 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?

b) Propriety

- 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Were the rules adopted in compliance with the Act?
- 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?

- 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
- 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?

d) Additional

- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
- 2) Are the rules accurate and current in relation to agency operations and programs?
- 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 260.800 Hearing by the Committee

Any one of the officers of the Committee may place a complaint on the agenda of the Committee to consider the rules. Such action will be based on evidence of possible problems with the rules in relation to the criteria in Section 260.700. A complaint will not be placed on the agenda if the officers find that the same issues have been previously considered by the Committee, unless the complaint reveals substantial information which was not available to the Committee at that time. At the hearing the persons making the complaint and the agency will be allowed to present their views. If the Committee finds that other persons or groups are directly affected by the rule, such persons or groups will also be allowed to present their views orally or in writing.

Section 260.900 Objection

If the Committee finds that a rule which is the subject of a complaint does not meet one or more of the criteria in Section 260.700, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 260.1000 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration I.
- b) The agency must respond to an objection by the Committee in one of the following ways:

- 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
- 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
- 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 260.1100 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 260.1200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 260.1300 Notice to Persons Making Complaint

The Director will try to insure that the persons or groups making the complaint are aware of the result of the Committee review and the nature of the agency response.

Section 260. ILLUSTRATION H Certification of Objection to Existing Rules

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules objected on _____ (Date) to the _____ (Name of Agency)'s rules entitled or concerning _____ (Title or Subject of Rules) which appear at _____ (Page or Location Identification) in the agency's rules.

A statement of the specific objections of the Joint Committee accompanies this certification.

Please take notice that failure to respond to this objection within 90 days, or failure to complete rulemaking initiated in response to this objection within 180 days of the receipt of this Certification of Objection shall constitute a refusal to remedy the objection.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this _____ (Date) day of _____ (Month), 19 _____ (Year).

Notary Public

(See Sections 250.1800 and 260.900)

Section 260. ILLUSTRATION I Agency Response to Joint Committee Objection to Existing Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____ Initiate rulemaking to repeal the rule(s) to meet the Joint Committee's objection

_____ Initiate rulemaking to amend the rule(s) to meet the Joint Committee's objection

_____ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 250.1900 and 260.1000)

Section 260. ILLUSTRATION J Certification of Recommendation

The Joint Committee on Administrative Rules hereby certifies that, on ____ (Date), pursuant to Section 7.04(3), 7.04(1) and 7.08 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules as a result of its review of rules entitled or concerning ____ (Title or Subject of Rules) recommended rulemaking or other administrative action by ____ (Name of Agency).

A statement of the specific recommendation of the Joint Committee and reasons for the recommendation accompanies this certification.

Please take notice that failure to act to implement this recommendation within reasonable time shall be considered by the Joint Committee as a refusal to remedy the situation.

Certified ____ (Date)

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) of ____ (Month), 19 ____ (Year).

Notary Public

(See Section 250.2100)

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APPENDIX D

TABLE OF RECOMMENDED BILLS

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APPENDIX E

ASSEMBLY ON LEGISLATIVE OVERSIGHT IN ILLINOIS

REPORT OF THE ASSEMBLY

Participants in the Illinois Assembly on Legislative Oversight meeting at Illinois Beach Resort, Zion, Illinois, January 7-9, 1982, approved this summary of their findings at the conclusion of their discussions. Since there were dissents on particular points, it should not be assumed that every participant subscribed to every detail of the statements contained herein.

I

Oversight of government has long been recognized as an important function and responsibility of the legislative branch. However, there has been little systematic evaluation of the Illinois General Assembly's capacity for, and effectiveness in, providing legislative oversight. Recent developments have combined to focus attention on the importance of oversight. They include the increase in size and scope of state government, the challenges for state government attendant with increased use of federal block grants and decentralization of governmental responsibility and authority, and the public demand that government make ever more effective use of scarce resources with a minimum of regulation.

These factors provided the impetus for the convening of this Illinois Assembly on Legislative Oversight.

II

The Assembly finds that oversight is a broad rather than narrow responsibility that seeks to insure the accountability of government to the legislative branch of government.

The Assembly finds that regular review of agency performance imposes valuable discipline on both the legislative and executive branches. As an alternative to, or in addition to, periodic review, consideration should be given to targeted, nonroutinized review activities.

III

Oversight should always be conducted with a sensitivity to the principle of separation of powers which is embodied in the state constitution. Increased oversight activity in Illinois in recent years has tended to increase responsiveness of, and internal evaluation and review by, agencies of state government. Nevertheless, more effective, systematic oversight can further enhance the effectiveness, responsiveness, and efficiency of state government.

IV

Effective, sustained oversight requires substantial direct involvement by legislators

themselves. The establishment of oversight units and tasks cannot substitute for the indispensable ingredients of legislative commitment to, and responsibility for, making and maintaining effective policy. All oversight units of the General Assembly should develop operations that elicit the greatest possible legislator involvement. Oversight units should not take formal actions in the absence of a majority of their membership, or of some other publicly specified quorum.

V

The oversight function is meant to serve the fundamental legislative purpose—the making of policy. Oversight assists in the initial establishment of policy and the continuous evaluation of the administration of established policy.

Effective sustained oversight requires that legislation be written as carefully as possible, and that public acts provide clear purposes, objectives, and sufficiently detailed provisions so that performance can be properly evaluated.

To achieve carefully drawn legislation, standing committees of the legislature should be strengthened through increased use of bills developed by committee deliberations.

To promote the objective of carefully drawn legislation, the use of conference committees should be limited strictly to amendments germane to the subject matter of the original bills.

VI

The Assembly believes that now is an important time for leaders of the Illinois General Assembly to initiate a review and evaluation of the legislature's oversight structure and operations.

The legislature should periodically review and evaluate its organization for oversight and make changes as needed to eliminate overlaps and duplication and to increase effectiveness, to assure the proper interaction of the various oversight entities, and to minimize the burden of oversight placed on the other branches of government.

VII

The General Assembly should also review its legislative process and the scheduling of its activities to determine if greater focus on, and opportunities for, systematic oversight can be developed in line with its central responsibility for comprehensive policymaking.

Options that might be considered in this regard include a return to biennial sessions for general policymaking issues; use of the remainder of the biennium for budgetary and systematic, formal oversight review activities; and special sessions devoted to the repeal of laws and regulations.

VIII

The Assembly identified a wide range of both traditional and relatively new oversight activities in which the state legislature is now engaged. These include: budget and appropriations and expenditure control, substantive committee work, constituent services, formal administrative procedures, advice and consent, compliance and performance auditing, legislative rule review and suspension, sunset and sunrise evaluation, and open meetings requirements.

To increase public understanding of these activities, the Assembly considers it highly important that the legislature, together with units of higher education, develop a "citizen's guide to legislative oversight" which explains in detail such things as the purposes, objectives, scheduling and flow, parameters, interrelationships and other dimensions of established oversight in Illinois. This publication should be widely disseminated.

IX

Allocation of resources is a central responsibility of the legislature and a critical part of its oversight function. Federal funds constitute a significant portion of total state government resources. For this reason the Assembly believes the state legislature has the primary responsibility to review and establish overall priorities for the expenditure of all funds generated by and received by the state, including block grants.

X

The Assembly finds that review of administrative rules is a valid and important responsibility of the General Assembly. The Joint Committee on Administrative Rules has proved helpful in preventing the adoption of inappropriate proposed rules.

The Assembly supports the Joint Committee's position that its deliberations must be limited to matters of the Administrative Procedures Act and that policy issues should be recommended to the General Assembly.

XI

The Assembly finds the sunset concept of periodic termination, reenactment, or modification through intensive review and evaluation to be a constructive form of legislative oversight. Indeed, the principle should be applied to a much broader range of programs. The Illinois Select Joint Committee on Regulatory Agency Reform, better known as the Sunset Committee, should be renamed to reflect its functions more properly. This committee should be reconstituted as a strictly legislative unit, including legislative appointment of public members, to integrate it more fully into the operations of the General Assembly. A procedure should be developed to identify all sunset and sunrise legislation for each legislator.

XII

The executive branch of Illinois government also has responsibility for overseeing its administrative activities and performance. Legislative as well as executive oversight can be improved through greater uniformity in information development and reporting from all agencies.

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